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HERBERT B. ADAMS, Editor

History is past Politics and Politics present History—*Freeman*

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THIRD SERIES
V-VI-VII

LOCAL INSTITUTIONS
OF
MARYLAND

By LEWIS W. WILHELM, Ph. D.
Fellow by Courtesy, Johns Hopkins University

BALTIMORE
PUBLICATION AGENCY OF THE JOHNS HOPKINS UNIVERSITY
May, June, and July, 1885

V-VI-VII

LOCAL INSTITUTIONS

OF

MARYLAND

"That which constitutes History, properly so called, is in great part omitted from works on the subject .... only now, when the welfare of nations rather than of rulers is becoming the dominant idea, are historians beginning to occupy themselves with the phenomena of social progress. That which it really concerns us to know, is the natural history of society. We want all facts which help us to understand how a nation has grown and organized itself. Among these, let us of course have an account of its government; . . . and let this account not only include the nature and actions of the central government, but also of local governments, down to their minutest ramifications."—*Herbert Spencer's Education.*

". . . the aforesaid now Baron of Baltimore, his Heirs and Assigns, from Time to Time hereafter, for ever, may and can, at his or their Will and Pleasure, assign, alien, grant, demise, or enfeoff so many, such, and proportionate Parts and Parcels of the Premises, to any Person or Persons willing to purchase the same, as they shall think convenient. . . ."—*Charter of Maryland, XVIII.*

"It shalbe lawfull for the ffreemen in every Hundred to assemble themselves together at some place to bee nominated within theire Hundred by such Commander or other officer in each hundred as shalbe nominated . . . and then and there by the maior voice of the ffreemen p^{r}sent to propose and conclude of such orders & ordinances as they shall Judg meete and necessary for the defence of each pticular hundred."—*Archives of Md.*, 1649, *p.* 254.

"This system imparts to the State the character of a confederacy of counties."—*McMahon: Government of Maryland, p.* 464.

"And be it further enacted, by the Authority aforesaid, That Two Hundred Acres of Land, so as aforesaid to be surveyed and laid out into Lots, immediately after the same shall be surveyed and laid out, shall be, and is hereby made and erected into a Town, and shall be called *Charles-Town;* and that the other Three Hundred Acres aforesaid, to be laid out for a Common, shall and is hereby made and declared to be the Common of the said Town; and that all and every the Inhabitants of the said Town shall, at all Times, have and enjoy the free Use and Benefit thereof in Common."—*Bacon: Laws of Md.*, 1742, *Chap. XXIII.*, 6.

". . . but the settlers, and now the Government, call *town* any place Where as many houses are as are individuals to make a riot, that is twenty, as fixed by the Riot Act."—*Foley: Records, Eng. Prov. S. J., III., p.* 323, (*letter from Maryland.*)

"The civil government in Maryland was in many instances copied from similar institutions which had been in practice and use in the elder colony of Virginia."—*Bozman: History of Md., II., p.* 44.

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I.

THE LAND SYSTEM.

In the last century there appeared in Europe many books of travels containing chapters upon the English colonies in America and illustrated by quaint maps giving the boundaries of the different colonies. Upon a few of these maps the northern boundary of the province of Maryland is represented as making a deflection near the headwaters of the Potomac River and running in a northwesterly direction toward the great lakes. The latitudinal boundaries of many of the colonies extended indefinitely toward the so-called South Sea, but, happily for public welfare, Maryland never included any part of the western lands of the Continent. If the government of Maryland could have established any claim to a portion of the territory lying north of the Ohio River, it is not improbable that the confederation of American Colonies, made in 1781, would have been long delayed, and their entire post-revolutionary history become radically changed.[1] Maryland lost no land in the cessions of northwest territory made by the colonies to the general government, for the simple reason that she never owned an acre of this large district. Nevertheless the present boundaries of the State, owing to the depredations of her neighbors,

[1] The results that followed the firm stand taken by the Maryland Assembly, in their resolution that the Northwest Territory should be ceded to the general government by the States laying claim to portions of it, are described in "Maryland's Influence upon Land Cessions to the United States," Johns Hopkins University Studies, Series III., No. 1.

contain not much more than a half of the territory originally granted by Charles I. to the first proprietary of the province.

If Cecilius Calvert, the first lord proprietary of Maryland, could have substantiated his claims, the State of Maryland would comprise, in addition to its present area, all that part of Pennsylvania south of the parallel of Philadelphia and lying between the Delaware River and the most western ridge of the Alleghanies, also all of the State of Delaware, a part of the eastern shore of Virginia, and all that part of West Virginia included between the north and south branches of the Potomac River. The territory included in the province of Maryland was undoubtedly the largest land grant ever made by a sovereign of England to a subject. The power and privileges vested in the lord proprietary corresponded with the area of the grant.

The charter of Maryland which secured to Lord Baltimore his new province in the new world, passed the great seal June 20, 1632, nine years after the grant of Avalon, in Newfoundland. In form there is not much difference between the charter of Avalon and the charter of Maryland, but there is a great difference in the tenure of land under the two charters, and in the administrative powers conferred. It was the tenure by which Maryland was held that gives such importance to the land system of the province, and that caused such a complex and unique system of land laws to be instituted.

Sir George Calvert had been a courtier at the court of King James nearly a decade from the time the charter of Avalon was granted till he had finally drawn up the Maryland patent, and during this interval he had not neglected to remedy the defects in his first charter so as to prevent such a disaster and failure in the new scene of colonization as had occurred to him at Avalon. Each of the two territories was held by feudal tenure. Avalon was held in capite, by knight's service. It is not stated to be held by fealty. Maryland was held by the most desirable kind of tenure known to English law, the tenure known as " free and com-

mon socage," by fealty. Being held by the tenure also known as petit sergeanty,[1] the lord proprietary was required each year to present two Indian arrows to the king at his castle of Windsor. Avalon had been purchased, but Maryland was a royal grant.

The boundaries of the province as defined in the charter were in general clear and explicit. They comprised all that part of Virginia lying north of the Potomac River and south of the 40th parallel of latitude, and extending westward from the Atlantic Ocean to the meridian passing through the fountain-head of the Potomac River.[2] The boundary disputes[3] which followed subsequent grants were generally decided against Baltimore; and the various steps by which Maryland lost territory on all sides of her boundaries, through the greed of her neighbors and the insincerity of the English sovereign, are a fruitful commentary on laws and ordinances impairing the obligation of contracts.[4]

Not including the water area, Cecilius Calvert came into possession, in 1632, of from ten to twelve million acres of land.[5] It was a grand fief for a young man only twenty-six years of age.[6] But the subsequent laws promulgated by him

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[1] Abbott: Law Dictionary, 2: pp. 463, 551.

[2] Charter of Maryland, sects. III. and V.

[3] The boundary disputes between Maryland and Pennsylvania have been fully described in a paper by W. B. Scaife, of the Johns Hopkins University, to be published in the Pennsylvania Magazine of History and Biography.—Ed.

[4] For an account of the dismemberment and partition of Maryland, see McMahon, I., ch. I., pp. 18-59, and Browne: Maryland, pp. 124, 137, 212, &c.

[5] The present total area of Maryland is 7,000,000 acres, of which about 6,000,000 acres is land.

[6] A great many encomiums have been passed upon Cecilius Calvert and his brother Leonard for their magnanimity in buying from the Indians the land upon which they settled and not taking it by force. Probably it was not so much a matter of fair dealing as it was of prudence. Only a few years before the Maryland settlers landed at the mouth of the Potomac, a horrible massacre of the whites by the Indians along the James River had nearly paralyzed the efforts of the great trading companies to settle these regions. Governor Cal-

for the government of this principality indicate that he was fully prepared to assume the responsibility.

The foundation of civil government in Maryland was the charter,[1] a long instrument originally written in Latin. Two years elapsed from the granting of the charter to the arrival of the emigrants in Maryland. During these two years Baltimore was busy framing the new government and looking around for able-bodied settlers. In addition to the executive and judicial powers secured to the proprietary by the patent, he was vested with extraordinary legislative powers. This is noticed in the disposition he could make of the land of the province, and of the conditions imposed and honors conferred upon freeholders. According to the charter, Baltimore was made the supreme land-owner of the province, he had exclusive property in the soil. The king reserved to

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vert gave the Indians of Yaocomaco a few axes and hoes for a small tract of land and for their generous hospitality in allowing the settlers the use of Indian huts, utensils and provender. Penn likewise gave the Indians of Shackamaxon a few trinkets and some cloth, but in neither case did the proprietors of the two provinces give to the Indians more than would purchase a few acres of land. History says nothing about the millions of acres appropriated by the two proprietors, for which no actual equivalent was given to the Aborigines. Cecilius Calvert did set aside about eight or nine thousand acres, in 1651, for the use of the six nations living in the province, being "bound in honor and conscience" to allow them this estate. But he did not forget to charge them the same rental as he exacted from the white settlers. (Bozman, II., p. 676). Baltimore did not recognize the validity of the Indian titles to the land of the province, and it was upon this point that he had a subborn contest with the Jesuits who bought large tracts of the Indians.

[1] The Charter of Maryland was treated like the Constitution of the United States, with a loose or strict construction, according as the upper or lower house dominated. A minute of the proceedings of the upper house, April 15, 1669, reads: "then came 3 members of the lower house and desired to have a coppy of the Lord Propys pattent for this province, that they may the better proceed and not intrench upon his lōps prerogative." At a later date in the same session of the Assembly, the upper house declared: "If no charter, there is no Assembly: no Assembly, no privileges." Archives, 1669, pp. 159 and 178.

himself one-fifth part of all gold and silver mined. The proprietary had the right of re-establishing in the new world the feudal system which had been gradually broken up in England, and which was entirely swept away by Charles II.[1] By an unusual assertion of the royal prerogative on the part of Charles I., Baltimore was granted the right to erect manors and manorial courts in Maryland, a right which the statute *Quia Emptores* prevented the king from enjoying in England.

According to the charter, Lord Baltimore was given full and absolute license and authority, at his own will and pleasure, to "assign, alien, grant, demise or enfeoff" such parcels of the province as he found convenient, in fee simple, fee tail, or for a term of years, and to receive in return "so great services, customs and rents" as were agreeable to him. No title from any Indian was to be recognized as valid, and the purchasing of land from the aborigines was a criminal offence and made the territory so purchased liable to forfeiture.[2]

In addition to his exclusive right to the soil of the province, as the supreme land-owner, the proprietary was vested with exclusive suzerainty in the government of the province. As lord paramount of the territory he was held to occupy the same position in regard to the freeholders of Maryland as the King of England held with respect to his liege subjects. His relation to his colonists was not simply that of supreme lord, but, by special terms of the charter, he was

[1] "Feudalism in England received a death-blow in 1660, by St. 12 Charles II., c. 24. It abolished court of wards and liveries, also wardships, liveries, primer seisins, ouster le mains, value of marriages, fines for alienation, escuages and aids, and other incidents of tenure by knight's service or socage tenure in capite." Smith's Eng. Inst., p. 27.

[2] The absolute right of the proprietary to all the land of the province was recognized by the Assembly. The purchasing of lands from the Indians was declared by the burgesses to be unlawful, prejudicial to his lordship, dangerous to the community and liable to "bring a great confusion in the government and publique peace of this province." Archives, 1649, p. 248.

made the supreme arbiter of the lives, fortunes, and property of the people, the source of all honor, justice, religion, order, and to a large degree of law itself. He could promulgate ordinances and claimed by his prerogative the right to dispense with existing laws. He was invested not only with all the rights ever enjoyed by any bishop of Durham, within the county palatine of Durham, but he was vested with additional rights and jurisdiction. In a word, we can say with McMahon, that the grant of Maryland was "the most ample and sovereign of its character that ever emanated from the English crown."[1] In a proclamation issued in 1649, Baltimore declares himself "absolute lord and proprietary" and asserts his claims to royal jurisdiction in the province.[2]

It has been said that Baltimore was "monarch of all he *surveyed.*" It is not probable that Cecilius Calvert, during his administration, managed to locate the four corners of his province, but in the proceedings of the Assembly of 1663 it was asserted that only a small part of the territory remained unpatented.[3] The means by which in a single generation, (1633-1663), nearly the whole province had been subdivided among the settlers is an interesting chapter in the land system of the province.

It is now generally admitted that economic motives and not religious considerations led the Calverts to found a province in the New World. Religious refugees did not flock very rapidly to his standard. The proprietary, we

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[1] McMahon, in his History of Maryland, devotes several pages to a discussion of the powers attached to the palatinate jurisdiction. McMahon, I., pp. 151-155. He refers the readers to 6 Viner's Abridgment, pp. 573 to 583, and 2d Bacon, pp. 188 to 192.

[2] In this declaration he says, "We are well satisfied by learned council here and such as are best read in antiquities, that the bishops of Durham before Henry the 7th, his time, (heretofore King of England,) had and did exercise all royal jurisdiction within the said bishoprick or county palatine, though this latter years their jurisdiction was much diminished by an Act of Parliament, made in the time of the said Henry [8th.]." Bozman II., pp. 669–70.

[3] Archives, 1663, p. 483.

observe, issued, from time to time, "relations," pamphlets and proclamations setting forth the advantage of the new territory. The fruitful soil, the serene, mild climate, the streams abounding in fish and the forests swarming with game, are advertised as inducements to settlers. These bright attractions won many of the common people. The gentry of England, however, remembered that Calvert was a Catholic, that he was invested with vice-regal powers, that he was young and ambitious. This class was reached by the tempting offer of large local power and authority over those districts to be selected by them. As a means to secure such local influence and dignity, he agreed to delegate a part of his large powers to the heads of colonies taking up large parcels of land, and to erect their lands into manors.

The statute *Quia emptores*, enacted in the reign of Edward I. (18 Edward I., c. I.), directed that in "all sales or feoffments of land the purchaser should not hold of his immediate feoffer, but of the chief lord of the fee."[1] The aim of the statute was to strengthen the hands of the king, and to prevent the intermediate lords from subinfeudating their lands. This great land-law, marking an epoch in the constitutional history of England, enacted in 1290, was virtually set aside by Charles I., after an interval of three and a half centuries, and the privilege denied the great feudal barons of England was bestowed in all its fulness upon the young Irish peer.[2]

The proprietary of the province became by the terms of his charter the sole tenant of the crown; the freeholders as sub-tenants should hold not of the king, as their superior lord, but of the lord proprietary. Apparently this clause of

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[1] See Kilty: Landholder's Assistant, pp. 22, 88.

[2] Green says the statute "*Quia emptores*" marked the progress of a wide social revolution in the country at large. It indicated the waning influence of the baronage. It was intended to check the growth of "squirearchy." Green: Short History of English People, p. 167.

the charter was of more benefit to the proprietary than to his tenants. In the hands of a ruler less wise and less liberal than the second Lord Baltimore, it is probable that the great power and property held by him would have led to usurpation and anarchy, as in other colonies. Cecilius inaugurated his liberal policy by offering generous conditions to all who would take up land in his province.

Kilty says the first "conditions of plantations" were published by order of Baltimore in 1633.[1] The earliest known publication of these conditions is contained in a pamphlet which appeared in 1635.[2] By these conditions 1,000 acres of land were offered to each adventurer transporting five men to the province, with manorial privileges, at a rental of 20 shillings sterling or in commodities, and "such other services as shall be generally agreed upon for publicke uses and the common good." Similar terms were offered to leaders of smaller colonies. These conditions of 1633 were in part superseded by the more favorable ones published shortly after the province was settled. These second conditions, published August 8, 1636,[3] instructed the Governor of Maryland to grant 2,000 acres of land to each of the original settlers of 1633/4, for every five able-bodied men in his household, for the yearly rental of 400 lbs. of good wheat. Each adventurer transporting smaller colonies was granted 100 acres of land for himself, wife and each servant, and 50 acres for each child at the annual rental of 10 lbs. of wheat for each 50 acres taken up. Adventurers of the two succeeding years were allowed 2,000 acres for every ten men on payment of 600 lbs. of wheat annually. Terms almost as favorable were offered to smaller companies. Each adventurer was required to "inhabitt and plant" the land taken up by him. The evident design of the proprietary was to dot the province with small yet vigorous and self-sustaining

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[1] Kilty, p. 29.

[2] "Relation of Maryland," anno 1635, reprint, Hawke's Edition.

[3] Kilty, p. 30–31.

colonies, and that these should become the economic and industrial centres of the province. He provided for the government of the larger land communities so as to keep them under control and yet not burden himself with the petty local affairs, by the institution of manors.[1] The governor was authorized to erect each holding of 1,000 acres or over "into a mannor, to be called by such name as the adventurer or adventurers shall desire."[2] The privileges of a court baron and a court leet were granted to each manor. Blank forms of manorial grants and freehold grants accompanied the copy of conditions.

Subsequently general conditions of plantations were made in the years 1641, 1648, &c.,[3] and specific conditions are contained in the instructions and commissions directed to the governor of the province. The tendency of subsequent grants was to decrease the amount of land granted for each able-bodied man, and to make the rents payable not in kind but in money sterling. Settlers taking up land under the conditions of 1641 were required to provide a specified quantity of arms and ammunition for each man of his company between the ages of sixteen and fifty years. The great seal of Maryland having been stolen, presumably by Ingle, in February, 1644, no further grants were made until the arrival of a new great seal in the early part of 1649.[4]

But the most important feature of the conditions of 1641 was the clause forbidding the alienation of lands to any corporation, temporal or ecclesiastical, without special license from the proprietary. The object of this restriction

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[1] It will be remembered that Baltimore instituted the manorial form of local government in the New World. The charter of 1632 is the first one to mention manors. Upon this subject, see "Old Maryland Manors," by John Johnson, A. B., Studies I., No. 7.

[2] Kilty, p. 31. Subsequently all holdings in Maryland, including manors, were known by some specific name, given by the taker-up of the land.

[3] See Kilty, pp. 30–36. Browne: Maryland, pp, 55, 56.

[4] Kilty, p. 44.

was to prevent the accumulation of large landed estates in the hands of the Jesuits.[1] This ordinance of the proprietary was the Maryland statute of Mortmain. Its effect is felt to this day.[2] The commission annexed to the conditions of 1649 authorized the governor to grant land to persons of French, Dutch or Italian descent upon the same terms as to persons of British or Irish descent.[3] It was to these conditions that foreigners appealed when subsequently petitioning for naturalization in the province.[4] Upon all land grants the conditions were imposed, implied or expressed, that the patentee should swear fealty to the lord proprietor.[5] From one of the clauses in the conditions of 1648, it would seem that the conditions of plantations in Maryland were to some extent copied from those of Virginia.[6] The governor was not authorized to make grants of land except in accordance with the warrant of the proprietary or according to the general conditions of plantations, but on rare occasions the governor made special grants before being instructed. In the year 1634 Capt. Henry Fleet received from the *governor and commissioners* of Maryland a grant of four thousand acres, a part of which was erected into the manor of West St. Mary's.[7] But this discretionary power on part of the governor was not often exercised. The proprietary, however, frequently made special grants of land as a mark of favor or in return for services rendered. We notice special

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[1] Johnson: Foundation of Maryland, p. 61, &c., (Maryland Historical Society Fund Publication.) Foley: Records of the English Province, Society of Jesus, vol. III., pp. 362–366, 385.

[2] The General Assembly of Maryland has succeeded to the position held by the lord proprietary, and in this State no real property can be devised to a religious corporation without a special Act of Assembly. See Browne: Maryland, p. 57. Maryland Code.

[3] Kilty, p. 46.

[4] Archives, 1666, p. 144. Petition for naturalization of John Jarbo, Augustine Hermann, et al.

[5] For a form of oath required, see Bozman, II., p. 659.

[6] Bozman, II., p. 658.

[7] Kilty, pp. 64 and 65.

warrants granted because the receiver of the grant intended to bring over a number of "artificers, workmen and other very useful persons," or because he intended to plant a vineyard, or in return for services rendered in the time of Ingle's rebellion, &c.[1] The lands were therefore granted at first only to immigrants from Great Britain and Ireland. Preference was shown to heads of small colonies, and especially to colonies containing the largest number of able-bodied men. From 1641 it was unlawful to alienate lands to corporations, on pain of forfeiture; and from 1649, grants were made to persons of foreign birth. Fealty was required of all freeholders.

The next consideration claiming attention was the size and location of grants. It has been seen that, by the conditions of 1636, the settlers of 1633-4 were allowed 2,000 acres for every five able-bodied men, or 400 acres *per caput*. This was the maximum grant allowed settlers, except for special services rendered. The same conditions allowed 50 acres to each child of a family. The conditions of 1641 allowed 25 acres of land to each child, and fifty acres to each adult. Henceforth fifty acres was the usual amount allowed to each immigrant.[2] The ordinary homestead of the average family was thus about 200 acres. But there is reason to believe, judging from the numerous places marked as manors upon early maps of the province, that there were many grants of a manorial kind, 2,000 acres, and there are some instances of very large grants. A certain Eltonhead received a grant of 10,000 acres,[3] and Mr. Charles Carroll of Prince George's county received a grant of 20,000 acres. Adjoining the Carroll estate the proprietary reserved a tract

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[1] Kilty, pp. 78, 79, 80.

[2] The conditions of 1649 allowed 100 acres to every adventurer of British or Irish descent, but for fear the whole province would become in short time tenanted by a few persons only, the grant was in 1651 reduced to 50 acres to each immigrant. Bozman, II., p. 677. Archives, 1651, p. 331.

[3] Kilty, p. 100.

of 15,000 acres for personal use.[1] The whole western portion of the province, lying beyond Fort Cumberland, was reserved for Baltimore and steps were taken to erect it into a proprietary manor.[2] It is worthy of note that these Maryland reserve lands were subsequently given by the State to the valiant survivors of the Maryland line in the war of Revolution.[3]

As a means to prevent a too general diffusion of the people throughout the province, it was specially provided that each of the early settlers should be assigned a house lot in the town of St. Mary's. To each of the first adventurers was granted "ten acres of land within the plats assigned or to be assigned for the town and fields of St. Mary's."[4] As the province increased in population, and when disputes began to occur in regard to outlying parts of the province, special efforts were made to colonize such places.[5] Extraordinary measures were taken in 1683 to induce settlers to migrate to the part of the province lying around the head of the Chesapeake Bay, then known as New Ireland. Col. George Talbott, a relative of the proprietary, was made deputy of these north-east sections of the province, and was granted very extensive powers in the disposing of land to immigrants.[6] The large powers granted the commander of Kent included the authority to dispose of lands to settlers upon this outlying island.[7]

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[1] Kilty, p. 100.

[2] Kilty, pp. 263–265.

[3] Kilty's Laws of Maryland, 1788, ch. 44, November. See also Landholder's Assistant, p. 343, et al.

[4] Bozman, II., p. 40. Kilty, p. 32–33.

[5] Kilty, pp. 38–60. Lands were granted on credit to persons settling at the Whore Kills, in the present State of Delaware.

[6] Kilty, p. 172 (note).

[7] In the Landholder's Assistant, Kilty has preserved copies of the demands of settlers for land grants, viz.: "Thomas Cornwaleys demandeth 2,000 acres of land by *first* conditions of Plantation, for transporting into the Province five able men servants in the year 1633." p. 70. "More demandeth 3,000 acres of land by conditions

As the proprietary of the province was the sole owner of the land of the province, we find no Act of Assembly interfering with the agrarian rights of Baltimore. He was permitted to dispose of his lands according to his own interests. The Act of 1642, "touching taking up of land," simply emphasized the conditions of 1641, and also prescribed in what form the land patent should be made.[1] Several Acts were passed by the Assembly called by Cromwell's commissioners, infringing upon the rights of the lord proprietor, but these Acts were promptly repealed by Baltimore upon coming into power. Even during the interregnum in Maryland, Baltimore's claims to the soil of the province were not openly controverted, and the principal changes made by Cromwell's commissioners were of a political nature, *e. g.*, relief of the settlers from taking the oath of fidelity to the proprietor, &c.

The various kinds of land tenure in the province were instituted almost entirely by the lord proprietor. The charter authorized him to alienate land in any manner he might deem expedient. As a rule the lands were granted in fee simple, but with certain feudal rights reserved to the proprietor, and the patent was made out in favor of the grantee, his heirs and assigns. The "quit-rents" paid by the holder of land to the proprietary are termed by Mayer the "rent services."[2] He compares the Maryland tenure to the *rente foncière* of Louisiana. The receiver of land received it in perpetuity, as a rule, on condition that he pay the annual rental. He could alienate it to any other person. The proprietary could only re-enter when the rent was not paid.

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of Plantation, for transporting into the Province 15 able men servants since the year 1635." Supra, p. 70. "4th April, 1643. Nathaniel Orchard demandeth 100 acres of land due by conditions of Plantation, for transporting himself into the Province in the year 1640." Supra, p. 69.

[1] Archives, 1642, pp. 159–60.

[2] Mayer: Ground Rents in Maryland, pp. 15–18. McMahon calls the rents, *rent charges*. McMahon, I., p. 169.

The estates held by the settlers were called "freeholds" in Acts of Assembly and elsewhere, but they were not the freeholds of the present day. Being subject to the annual quit-rent, they were estates in trust rather than allodial estates, and were feudal in form if not in essence.[1] The holdings being assignable and transmissible, formed an actual estate of inheritance. Restrictions, however, could be placed by lords of manors upon their under tenants, and there is no evidence that a manor could be subdivided into smaller manors by the tenants. It was quite common for the lords of manor to subinfeudate parts of their estate. This privilege was granted by the conditions of 1649. They were empowered to grant any portion of their manor, save the demesnes, to any English subject, "Either in fee simple or fee tayle for life, lives or years," and under such rents "not prejudicial to his lordship's royal jurisdiction."[2] The entailing of estates was not specially granted to the lords of manors and other freeholders, but it was a right not repugnant to the proprietary, and became very general throughout the province.

Mayer makes mention of a kind of limited or base lease known as "Proprietary Leases."[3] They all ran for ninety-nine years, but contain no covenant for renewal. Many of the reserves and manors of the proprietary were so leased. According to the provisions of these leases, all mines of metal discovered upon the land belonged to the proprietary. They could not be alienated for a period longer than a year without special license of the proprietary or his agent. Upon

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[1] To each adventurer was granted "fifty acres of good land lying together in one place within the said province, to be holden of some mannor there of his lordship's and his heirs in socage tenure rendering and paying yearly for every fifty acres" a rent of one shilling sterling, &c. Bozman, II., p. 657. Charles Carroll's tract of 10,000 acres was held "as of our mannor of Baltimore, in free and common socage, by fealty only for all manner of services." Mayer, p. 20.

[2] Bozman, II., p. 657.

[3] Ground Rents in Maryland, p. 28–29.

the failure of the lessee to keep certain conditions the property immediately reverted to the proprietary.

It is interesting to find that copyhold tenure was not unknown in the early periods of the provincial history.[1] But instead of being brought about as in Eugland by a gradual rise from the villein tenure, it had in Maryland been caused by a depression of former leasehold and freehold tenures. Many of the copyhold tenures became further depressed into the base villein tenure. Examples of the copyhold and villein tenures were frequent among the more peaceful Indians of the province. As in England the copyhold estates were held by a fixed though onerous tenure. In a letter of the year 1651 to Governor Stone, the proprietary says he is informed that six nations of Indians desire to put themselves under his protection. He therefore directs that a tract of land, about eight or ten thousand acres in area, be reserved for him at Choptico, at the head of the Wicomico River. The surveyor general of the province was appointed steward of this tract, erected into a manor by the name of Calverton. The steward was directed, on behalf of the proprietary, to grant, "by copy or copies of court-roll, copyhold estates, for one, two or three lives, of any part of the said manor, except the demesnes thereof, to any Indian or Indians that shall desire the same." No copyhold should exceed fifty acres, except "to the werowance or chief head of every of the said six nations abovementioned."[2] There is no evidence to what extent the Indians became willing to become copyholders of the land which formerly they held in fee, or at least in common. But the evidence

[1] "If it appeared that the grants of these tenants had been entered on the record of the court-baron, the above extracts might be construed as an evidence of a holding by copy of court-roll or according to the custom of the manor, usual in England, . . . and there is reason to presume that in connection with the system of manors, the incidents of copyhold estates, viz: fealty, suit of court, reliefs or heriots, quit-rents and fines, were not unknown for a time at least." Mayer, p. 24.

[2] Archives, 1651, pp. 329, 330. Bozman, II., p. 676.

is very conclusive that, not knowing the intricacies of the Englishman's land tenures, he became even further degraded, and like the Saxons of England, after the Norman invasion, was obliged to become the mere villein of the lord of manor, and to hold his small holding entirely upon the will of his master and at the charge of unlimited services.[1]

Another important feature in the land system of Maryland was the succession and alienation of land, or its transfer from person to person. As the freeholds were in general an estate of inheritance, no impediments were placed upon bequeathing it to the heirs of the owner. The right of bequest was secured to each freeholder by the conditions of plantations. Acts of Assembly were enacted from time to time, regulating the descent of land according to the "generall custome or common law of England." These Acts secured the rights of widows and provided for the care of orphans' estates.[2] In the ordinary conveyance of land from one party to another, it had been customary, in the early stage of the provincial history, to surrender the patent back again to the proprietary or his agent, the purchaser having a new patent granted to him.[3] But the more simple form was introduced, viz.: conveyance directly from the seller to the purchaser, by means of a deed.[4] In the case of an estate left without heirs, it escheated to the proprietary as lord of the soil. Such land became his undisputed property and could be regranted by him like other lands not hitherto patented.[5]

In connection with the land system of the province, a

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[1] In the "Landholder's Assistant," ch. VI., Kilty gives some interesting details about statutes and ordinances referring to Indian lands. As late as 1798, an Act was passed debarring the Indians from selling, leasing or disposing in any way of the lands held by them at Secretary's Creek, Dorchester County. In a sense, the Indians became copyholders of the State. Kilty, p. 357.

[2] Archives, 1638–9, p. 60; 1642, p. 157.

[3] Kilty, pp. 210, 211.

[4] Archives, 1663, p. 487–488.

[5] Bozman, II., p. 581: Kilty, pp. 103, 104, 177, &c.

large share of attention was naturally devoted to the subject of land rents. It may be premised at the start, that although Baltimore was an Irish peer, he never permitted the rack rent system to be introduced among the English subjects in his province. The legal name of the rentals in Maryland was "quit-rent." The rent was certain and unvariable, and upon its prompt payment the tenant was quit of any other service except fealty. Ricardo has defined rent as "that portion of the produce of the earth, which is paid to the landlord for the use of the original indestructible powers of the soil."[1] In Maryland the rent was originally paid in kind and not by money payments. It was from the quit-rents that the proprietary derived the largest income from his province. By the conditions of 1636, the oldest settlers of the province were required to pay an annual rent of 20 lbs. of good wheat for every 100 acres of land patented. The settlers during succeeding years were charged at the rate of 30 lbs. of wheat for 100 acres. Immigrants taking up lands after the year 1635 were required to pay for every 1,000 acres, "the yearly rent of twenty shillings, to be paid in the commodities of the country."[2] Whether estimated in commodities or in money, the rent services were not onerous. By the conditions of plantations of 1648 and 1649, the manorial lands were subject to a rental of forty shillings sterling for every 2,000 acres for the first seven years, of forty bushels of wheat, or six pounds sterling, for each of the succeeding fourteen years, and for all time thereafter the annual rent should be the twentieth part of the annual yield of the land, or in lieu ten pounds sterling.[3] The option of paying in commodities or in money lay with the proprietary and not with the tenant. As he had the choice of being paid in gold, silver, or produce, it is to be presumed he selected that payment which offered him the largest actual

[1] Ricardo, Pol. Economy, ch. 2, p. 34.
[2] Kilty, pp. 30, 31.
[3] Kilty, pp. 38–41.

returns.[1] Rates similar to the above were allowed to holders of 50 acre lots. In 1657 the proprietary instructed Governor Fendall to grant land to new-comers,[2] at the annual rental of one shilling for every fifty acres. The quit-rents ceased upon the overthrow of the proprietary government, as the landed property of the inhabitants became allodial freeholds, and the proprietary lost his agrarian as well as his political rights.[3]

In addition to the quit-rents, the proprietary received certain fines and fees, as caution money, composition money and alienation fines. No revenue from caution money was received until after the death of the first proprietary. According to his conditions of plantations no lands were sold, but only granted to actual settlers. Charles, the second proprietary of the province, by an ordinance of the year 1683, allowed any person to purchase land in the province to any extent. The caution money or purchase money did not relieve the holder of the usual quit-rent. Along the seaboard the caution money was one pound of tobacco per acre, in the inland parts it was two pounds of tobacco per

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[1] As there existed in the province, during the first century, a scarcity of English gold and silver coins, we find that the payments in pounds sterling were commuted to payments in tobacco, the legal money of the colony, at the rate of two pence per pound of tobacco, and at times in corn. See Archives, 1671, p. 286. Kilty, p. 72.

McMahon says that after the year 1733, quit-rents became payable in money, and continued so until they were abolished. McMahon, I., p. 175.

[2] Bozman, II., p. 701.

[3] Declaration of Rights, 1776, Art. 3, (in Hanson's Law of Md.,) an Act of Assembly of 1780, reads: "Whereas, since the present glorious revolution, the payment of quit-rent has ceased throughout the United States, and sound policy dictates that the citizens of this State should hold their lands on equal terms with the citizens of the other States;" resolved, that "the same be for ever abolished and discontinued." 1780, ch. XVIII. (Hanson's Law of Md.)

Henry Harford, the last proprietary of Maryland, was allowed £90,000 by the British government for the loss of his quit-rents and other property in Maryland. Mayer: Ground Rents in Maryland, p. 37–8.

acre.[1] The composition money was the consideration paid when the warrant was taken out. The alienation fines were an incident of feudalism and were transferred to Maryland with the socage tenure. No tenant could alienate his lands to another person without paying to the lord proprietary an alienation fine equal to one year's rent, at first payable in money, but in 1671 commuted to tobacco. No mention is made of alienation fines in Maryland until 1658, only two years before all incidents of the feudal tenure were entirely abolished in England.[2] In addition to fines and quit-rents the takers up of land were required to pay certain fees to the secretary of the province and other land officers for the issuing of patents, &c.[3] Toward the end of the proprietary government a famous contest arose in the province between the Governor and the Assembly, concerning the regulation of land fees, whether they should be determined by order in council or by an Act of Assembly.[4]

The proprietary for many years had the exclusive control of the granting of lands and of its conveyance and transfer. This power he assumed as the sole landlord of the province. Gradually, however, the want of carefulness and of strict integrity on the part of the proprietary's officers caused the people to feel uneasy about their landed property and to take steps to secure precise grants, accurate surveys and indisputable titles to their landed estates. During the Assembly held in 1637/8 no less than eleven land acts were enacted by the freemen, regulating the boundaries, assignment, alienation, of freeholds and manors, but these acts

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[1] Kilty, p. 124–5. McMahon, p. 173. Mayer, p. 14. At times, the first proprietary seems to have accepted a money payment from a settler, in lieu of his entering his quota of immigrants as required by the conditions of plantations. See Kilty, p. 69, (note.)

[2] Statute 12 Chas. II., c. 24. An ordinance in council abolished alienation fines upon devises, in Maryland, in 1742. See McMahon, p. 175.

[3] Archives, 1638–9, p. 58, et al.

[4] Kilty, pp. 256, 257.

together with all acts passed by this Assembly were vetoed by the proprietary. All questions concerning the taking up and the descent of land were henceforth settled by orders in council, or by commissions and instructions sent over by Baltimore.[1] By a commission bearing date September 5, 1642, the Secretary of the province, John Lewger, was authorized to enter and record all grants of lands, and to receive his lordship's quit-rents from the same. He was also appointed judge of all causes testamentary.[2] The office of Surveyor General, established in 1641, was the only life office under the proprietary government.[3] As a rule the tenure of office was during the pleasure of the proprietary. This officer was commissioned as the Surveyor General of all "castles, lordships, manors, forests, chases, parks, messuages, tenements, lands, woods, rents, revenues, possessions and hereditaments whatsoever of the lordship" within the province of Maryland.[4] He was therefore a personal officer[5] of the proprietary as well as a public officer. He

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[1] The commission to Gov. Calvert bearing date April 15, 1637, authorized him to grant land under the great seal of the province, and to act as judge in all civil causes. John Lewger, one of the three councillors, was commissioned Secretary and ex officio, the register of lands. Bozman, II., pp. 572, 576. Foley: Records, &c. S. J., p. 365.

[2] Bozman, II., pp. 626, 651.

[3] Kilty, p. 65, (note.)

[4] Kilty, p. 65.

[5] There is no published record of instructions sent to the Surveyor General until the year 1671. This year, the Surveyor General, Baker Brooke, nephew to the proprietary, was instructed to survey at once all lands not known to be surveyed and report to the Governor if the proprietary was in any way wronged, also to call courts of inquiry and to resurvey all lands of the province once a year, examine all titles and see that all lands were held by lawful title and that the rents and services required of the landholders were paid, also see that he reserve eligible places for fortresses for the defence of the country, that he allow no planter more than fifteen poles along any water-way, for each fifty acres of land, that he lay out at least two manors in each county for the use of the proprietary, and that he be careful to secure to his lordship the possession of all escheated and forfeited lands. See Kilty, p. 62.

was authorized to commission deputy surveyors. The duties of the Surveyor General were important and various, but it is probable he was seldom called upon to survey castles, chases and parks.

The *modus operandi* of surveying a grant of land was probably the following. The examples cited are taken from Kilty. The settler having arrived in the province at once made public record of the time of his arrival and the number in his company.[1] Having secured an official certificate of his arrival, he was enabled to place on record at the Surveyor General's office, a demand for the quantity of land due by the conditions of plantations.[2] The site having been selected a warrant was directed by the Governor to the Surveyor General instructing him to locate and bound the land and place it upon record.[3] This was followed by a certificate of survey[4] issued by the surveyor, and finally by the patent.[5]

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[1] "Came into the Province, 28th November, 1637, in the ship called Unity, of the Isle of Wight—Mr. John Lewger, who transported his wife, his son John, aged 9 years, Martha W., Ann P. and Mary W., maid servants, Benj. C., Philip L., Thomas F., and a boy Robert S., aged 12 years." Kilty, p. 67.

[2] "16th April, 1642.—Thomas Passmore hath entered upon record a demand of 200 acres of land due by conditions of plantations for transporting two men servants called Thomas P. and Richard W., in the year 1634, as he hath affirmed by his oath." Kilty, p. 69.

[3] "Mr. Surveyor: *9th October*, 1639.

"I would have you set forth a portion of Town land for Captain Giles Brent, Esq., containing to the quantity of sixtie acres or there abouts, lying nearest together about the Smith's forge, lately built by the said Giles Brent, and for soe doing, this shall be your Warrant. [Signed] "Leonard Calvert."

[4] "4th December, 1639.—Laid out for Mr. William Lewis, one neck of land, lying upon the northern side of St. Inigoes creek, and bounding on the west with St. Andrew's creek; on the east with the freehold of St. Maries Hill, and on north with the town land of Robert Clark, as it is distinguished by marked trees, containing thirty acres or thereabouts.

"John Lewger," [Surveyor General.]

[5] "Cecilius, &c. Know ye that We, for and in consideration that William Britton, Gent. hath transported himself in person, his wife,

These simple proceedings were from time to time changed to suit the numerous cases of land grants that occurred in the province, as immigrants of various ranks and nationalities came to settle. For a half century, however, no important changes were made.[1]

In the year 1680, Charles, Lord Proprietary, erected in the province the department of government known as the Land Office. This step had been found necessary by the increased demands for land, the want of accuracy in many of the old surveys, the carelessness with which papers had been drawn up and by important changes in the conditions of plantations. For some years previous to the erection of this office the land administration had grown into a very complicated system and had been entrusted to the governor, governor and council, secretary, surveyor, the select land council, receiver general and chief agent of the proprietary. The Land Office survived the shocks of the many revolutions in the province and remains to-day an important department in the State administration. Several judges were appointed to administer the affairs of the Land Office, also an examiner general of plats and surveys, and surveyors and other land officers for each county.

The most important feature of the land system of Maryland was the granting of manors, and the accompanying privileges of local government. The incorporation of this

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one child and three able men servants unto our said province of Maryland in the year 1637 . . . granted, enfeoffed, &c. unto the said William Britton, all that neck of land lyeing on Potomack River, &c. (ut supra in survey.) To have and to hold, &c., to the said William Britton and his heirs, &c., to be holder of our Manor of Little Britain, Yielding therefore at our usual receipt at St. Maries, fifteen shillings in money sterling, or one barrel and a half of good corn, &c. Given, &c., on this tenth of July, 1640."

[1] So well satisfied were the freeholders with the security and freedom of the land administration that it became the custom to employ the certificate of land rights as a medium of exchange. Kilty: Landholder's Assistant, p. 77, (note.) These certificates were like the French assignats, and probably the first *paper* currency used in America.

feature into the charter of Maryland[1] indicates great forethought on the part of Sir George Calvert, and shows that he had a keener knowledge of the wants of the people and of civil government than is usually credited to him. It was much better for his interests and for the economic growth of his province, that the demand for local government, instinctive in an Englishman, should come through the lord proprietor, than be asserted by the freemen as an inalienable right. A too active growth of local government in the province would have been dangerous to the stability of the proprietary government, and this growth was regulated and undue license was checked from time to time by the proprietary's methods of issuing manorial grants. It was a prudent step on the part of Edward I., of England, when he enacted the famous statute of *Quia Emptores*, for he was enabled to win over the common people to his side against the growing power of his lesser barons. But the enactment of the statute of *Quia Emptores*, by Edward, led to the gradual decrease of the intermediate lords, the squires, and to the aggregation of the people into two classes, the greater barons and the simple freemen. The re-enactment of the manorial grants led, in Maryland, to the formation of the very useful and at times important class of country gentry. Without the privilege of erecting manors in Maryland the proprietary would have had a very difficult political problem to solve in regulating the local government of the minor settlements of the province.

The old manors of England had two distinguishing traits, without which they became simple freeholds. The first was the right of the lord of the manor to hold a court-baron, and the other was the possession by the lord of a demesne land. Both of these incidents of the English manor were reproduced in the manors of Maryland. The land of the English manor was generally divided into three parts, varying in size

[1] The charter of Avalon, Newfoundland, did not provide for the erection of manors.

in different portions of the kingdom. The two essential divisions of the manorial land were into freeholds and demesnes. The demesnes, as a rule, were subdivided into the demesnes proper, or the part occupied by the manor-house and gardens of the lord, also into the part occupied by the villeins or tenants-at-will, and lastly, into the part occupied by the copyholders or customary tenants. The freeholds were occupied by the socage tenants. The third subdivision of the manors was the lord's waste, used both for public roads and for common pasturage for the lord's tenants. The manors of England frequently included warrens, forests, parks, chases, &c. The larger manors became small municipalities and grew into important, self-governing communities.[1]

The statute *Quia Emptores* forbade the subinfeudation of land, and hence indirectly prevented the erecting of any new manors, for it was essential to a manor that there be tenants holding of the lord. Hence the tendency was to diminish the number of mesne lords, and to increase the number of tenants-in-chief. It must necessarily increase the business of the king's judicial and executive officers. It might seem that it was very unwise in Calvert to neglect the *Quia Emptores* statute, and to re-establish in Maryland the effete English government of the thirteenth century instead of that of his own times. But, it must be remembered, the environment of the settlers of Maryland in 1634 bore a much closer resemblance to the conditions of affairs in England in the times of Edward I., than they did to the times of Charles I.

At any rate, the mediæval manorial institution, transplanted to Maryland, took kindly to the soil of the New World and became of vigorous growth. Partly by acts of Assembly, partly by orders in council, and very largely owing to the force of custom, the manors of Maryland became

[1] According to De Laveleye, the manors are historically connected with the territorial divisions of the mark, and also with the parish or township. Primitive Property, ch. XVIII.

almost the exact reproductions of the manors of England. The manors of England contained generally at least 1,000 acres. The manors of Maryland must contain not less than 1,000 acres, but might include 10,000 or 15,000 acres. As in England, the manor was held of the lord's seigniory, or honor.[1] Demesne land must be reserved by the lord of manor.[2] The special privileges and prerogatives claimed by the lords of manors in Maryland were, trial by peers,[3] freedom from ignominious death,[4] summons by special writ to every Assembly,[5] right to keep stray cattle,[6] and right to escheat of tenements.[7] The chief privilege granted to each manor was the holding of court baron and court leet. The court leet, or the court of the people, was the petty criminal court of the manor. It took cognizance of the peace of the manor, and exercised jurisdiction over all the lord's tenants. The court baron was the civil court and had jurisdiction over the freeholders of the manor. It regulated the redress of nuisances and the settlement of agrarian disputes. In the court baron the freeholders were the judges, though the steward or seneschal of the manor presided. The court leet

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[1] Blackstone, B. II., ch. VI., Manors. Kilty, p. 93.

[2] "The sixth part of the land of every mannor which shall be granted by virtue of the said conditions, shall be for ever after accompted and known for the demesnes of every of the said mannors respectively, which demesnes shall be set forth in some one convenient place alltogether within every such mannor by distinct meetes and bounds for that purpose, and shall never be alienated, separated or leased" for a period exceeding seven years. Conditions of Plantations of 1648. Kilty, p. 39.

[3] Archives, 1638–9, p. 51.

[4] Supra, 1638–9, p. 71.

[5] Archives, 1638–9, p. 74.

[6] Supra, 1650, p. 271.

[7] Kilty, pp. 103, 104, 177. Lands vacated, deserted, forfeited, or without visible heirs, generally escheated to the proprietary and not to the lord of the manor. Several instances are on record where tenements escheated to the lords of manor, on the non-payment of rent on part of the tenants. Kilty, p. 103.

was held twice a year, the court baron was convened upon the call of the steward.[1]

In addition to the above manors, the conditions of plantations provided also for proprietary manors, and the so-called Indian manors. The surveyor-general was instructed to lay out in each county at least two manors of not less than six thousand acres each, for the personal use of the proprietary.[2] These proprietary manors, except the demesnes, could be leased out for terms of years, varying from one to three lives, or from twenty-one to ninety-nine years.[3] The location of some of the proprietary manors has been preserved.[4] The land records indicate that almost up to the Revolutionary War, large tracts of land were reserved for the use of the proprietary and erected into manors. In a letter dated 10th of April, 1764, the judges of the land office were notified by Governor Sharpe that the surveyor had been ordered to reserve for the proprietary ten thousand acres of land in Frederick county, beyond Fort Cumberland, to be erected into a manor.[5]

The most noted Indian reservation was the manor of Calverton. The entire tract contained nearly ten thousand

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[1] Kilty, p. 107.

[2] Kilty, p. 63.

[3] Kilty, p. 97. Mayer, p. 28.

[4] "May the first, MDCL and V. (1665). Then came Jerome White, Esq., and Surveyor-General of this province, and requesteth that the manors reserved for his Lordship hereafter menconed may be entered on record as followeth, viz.:

"In the county of St. Mary's reserved the Beaver dams and Choptico.

"In the county of Charles, Pangaio and Sackaio towns, for six thousand acres in each mannor of the best land about the said towns.

"In Calvert county, the manor of Patuxent.

"In Ann-Arundel county, The Ridge, with another mannor reserved, lying on the north side of the head of the Severn river, above a place called 'The Eagle's Nest.'" See Kilty, p. 99.

[5] Kilty, pp. 241, 263. The proclamations, warning settlers not to locate on any part of the province west of Fort Cumberland, were published both in English and German. Supra, p. 264.

acres, all of which to be reserved for the six tribes of Indians, who sought the protection of the government, except one thousand acres for the proprietary's demesnes. As each Indian brave was allowed fifty acres, and each chief two hundred acres, the whole reservation would satisfy the demand of only one hundred and fifty Indians. The tenure was by copyhold, and the rental one shilling sterling, or its equivalent, for every fifty acres. The copyhold estates were to be held by as good and valid a title as if each estate had been granted under the great seal of the province.[1] Other Indian reservations were held by socage tenure, but entailed, and upon others the Indians were but tenants-at-will.[2]

Te officers of each manor included, it seems, a tithingman or bailiff, a constable, and a seneschal or steward.[3]

The land system instituted by Baltimore tended to reproduce in Maryland, not the England of the time of the Stuarts, but the England of the time of King John and the Great Charter. But the province made as rapid progress in a decade as the mother country did in a century. The proprietary, the lords of manors and the freeholders bear an analogy respectively to the king, the barons,[4] and the gentry. The Indians, slaves and redemptioners may be compared to the villeins and serfs, and the freemen of the counties and of St. Mary's city, to the free inhabitants of the cities and free boroughs. The geographical subdivision of the land into counties, hundreds, manors, and subsequently into parishes and towns, bore a striking resemblance to similar institutions in England. It would not be difficult to trace a resemblance between the Assembly, composed of one house,

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[1] Bozman, II., p. 676.

[2] In 1799 the Choptank Indians had dwindled down to four individuals. The State allowed each one ten acres of cleared land and ten acres of wood land. Kilty, p. 358.

[3] Archives, 1638–9, p. 54. Bozman, II., p. 138. Old Maryland Manors, Series I., VII., p. 34.

[4] The title of *baron* was originally applied to all freemen in England. Blackstone, Bk. II., ch. VI.

and limited almost entirely to land owners, and the imperfect Parliaments of King John and his son, Henry III. In the provincial Parliament of Maryland we find represented, or at least summoned, the lord of the manor, the clergy,[1] the burgess representing the hundred, and the delegates from the city of St. Mary's. The governor's council, composed of land owners, and similar to the privy council of the English sovereign, also sat in the Assembly and took part in its deliberations. During the first decade of the history of the province we find the clergy owning vast estates, withdrawing from the pale of the proprietary's authority and contesting strenuously against the jurisdiction of the civil law, and, fortified by certain recent bulls of the pope and by instructions received from the ecclesiastical superiors, endeavoring to hold themselves amenable only to the canon law. The three Jesuit fathers, Copley, White and Altham, summoned by special writ to the Assembly of 1637-8, declined to appear, two of them pleading sickness, and when their names were again called out in Assembly, one of the freemen made answer that "they desired to be excused from giving voices in this Assembly." Their excuse was accepted and no fine was imposed.[2] The exemption of the inhabitants of the province from the imperial taxation and also from the judicial administration of England also tended to make the institutional and constitutional history of Maryland develop in a direction parallel with that of England. But in England "the people" consisted of freeholders in severalty, the

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[1] Foley: Records, &c., III., p. 336. Johnson: Foundation of Maryland, p. 56. But Baltimore's legal contest with the Jesuits left an abiding impression upon the constitutional history of the province, and the clergy were, subsequent to 1641, not only not summoned to the Assembly, but have been forever barred from this privilege. McMahon, p. 449, (note.) Browne: Maryland, p. 57 (note.)

[2] Browne: Maryland, p. 55. Archives, 1637/8, pp. 2 and 5. Johnson: Foundation of Maryland (Md. Hist. Soc. Pub., No. 18), pp. 58, 71, &c. Foley: Records, &c., III., pp. 336–7.

gentry, or of the freeholders in common, the burgesses of the free cities and boroughs. In Maryland, however, for half a century, the privileges of citizenship were granted to some persons, neither freeholders nor burgesses, called freemen.

It was peculiarly fitting that the system of feudal tenure and administration first firmly instituted in England by a Bishop of Durham, Ranulf of Flambard,[1] under the second Norman king, should find its latest development in the Maryland palatinate, the first of the proprietary provinces in America, and should here in the distant new world gradually wane away and perish centuries after the system had passed away from the soil of England. By statutory law the manor in Maryland, the most striking peculiarity of its land system, has become a thing of the remote past, but the diligent seeker may find here and there many evidences of the influence the institution exerted during colonial days.[2]

In connexion with the inquiry into the land system, it may not be unprofitable to consider whether freeholders alone were entitled to the elective franchise under the proprietary government. No question can be raised upon this point so far as the last century of the proprietary regime is concerned, but much discussion has arisen as to the status of the landless man during the early history of the province. In September, 1681, an ordinance of the proprietary was promulgated in which the right of suffrage was limited to freeholders, or to inhabitants having an equivalent personal estate.[3] These restrictions were retained until the province had become an independent state. The inference has been drawn from this ordinance that previous to this date the elective franchise and the right to sit in the Assembly had always been restricted to property owners, as it is a very rare occurrence and a somewhat dangerous political measure to disenfranchise free citizens. But the facts in the

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[1] See Freeman in Ency. Brit., Art. England, p. 303.

[2] "Vestiges of manorial rents and customs may be discovered throughout the State at this day." Mayer: Ground Rents in Maryland, p. 39.

[3] McMahon, p. 449, (note).

case indicate that in Maryland such a measure was actually carried out, and that during the administration of the first proprietary a freeman was not necessarily a freeholder, and also that certain freeholders (*e. g.* foreigners) were not necessarily freemen, *i. e.*, entitled to vote or sit in the Assembly. The latin text of the charter distinguishes between *liberi homines* and *liberi tenentes*.[1] Bozman came to the conclusion that the two expressions were synonymous, but in the second edition of his history he modifies his former statement and says the subject is "involved in some doubt and obscurity and the reader is to exercise his own judgment."[2] But the word *freemen*, and not *freeholder*, is alone used in the proceedings of the Assembly, in the references to its constituent members. Among the freemen mentioned by name in the records of the Assembly proceedings, the great majority are designated as *planters*, but a number of handicraftsmen, as carpenter, cooper, brickmason, etc., are specially referred to,[3] implying that the free subject of England did not lose his suffrage in the agrarian province of Maryland.[4] In a remonstrance drawn up by the lower house in 1666, the distinction between freeman and freeholder is sharply drawn, and reference is made to the

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[1] Charter of Md., sections 7, 8, 21. Baltimore was authorized to ordain and enact laws "cum consilio assensu et approbatione Liberorum Hominum ejusdem Provinciæ." Charter of Md., section 7. But he was allowed to make ordinances in his own right in case any sudden emergency should endanger the province "before the freeholders of the said province" (Liberi tenentes dictae Provinciae) could be convened. Charter, sect. 8. The charter further stated that the freeholders and inhabitants (Terrae tenentes vel incolae) of the colony should owe no allegiance to Virginia. Charter, section 21.

[2] Bozman, II., p. 48, (note.)

[3] Archives, 1637/8, pp. 2, 3, 4; also 1642, p. 170.

[4] An unfree mechanic, however, could only obtain freedom and the right of suffrage by the ownership of a freehold. Many of the white artizans, probably indentured servants, redemptioners, or convicts, were bought and sold in a manner apparently similar to the purchasing of black slaves. In his instructions to his treasury commissioners in 1641, Baltimore ordered "that all my carpenters and other apprentice servants there be sold forthwith for my best advantage, which I understand will yield at least 2,000 lb. tobacco a-piece,

"labours" of the freemen and the estates of the freeholder.[1] A bill of the upper house, of the same period, alluding to the freeholders, affirms that "they are the strength and only strength of the Province, not the Freemen, It is their persons, purses and stocks must bear the burthen of the government, both in peace and war, and not freemen who can easily abandon us."[2] If additional evidence is needed to prove that the term freemen was not limited to freeholders, it is furnished by the case of Mr. Thomas Weston, who petitioned to be excused from sitting in the Assembly, claiming he was no freeman because he had no land nor certain dwelling here." But the Assembly decided he was a freeman and must attend the deliberations, or be fined.[3]

McMahon is of the opinion that, according to the charter, only freeholders were obliged to be summoned to the Assembly, but that the proprietary, of his own will, extended the suffrage to the free residents, irrespective of property qualifications.[4] But Mr. Weston, mentioned above, would have been spared service in the Assembly if this interpretation was correct, for, although Calvert might have permitted the landless freemen to deliberate in the provincial Assembly, he was not authorized to make the attendance compulsory. The settled policy seemed to have been to allow all freemen and freeholders to sit in the Assembly as delegates, and to have the right of suffrage,

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although they have but one year to serve especially if they be carpenters." Bozman, II., p. 629.

[1] Archives, 1666, p. 44.

[2] Supra, p. 47.

[3] Archives, 1642, p. 170. Stubbs makes the point: "it is of the greatest importance in all our early history to remember that attendance at courts and councils was not regarded as a privilege, but as a burden; *suit* and *service* were alike onerous." Stubbs: Con. Hist., I., p. 377, (note.)

[4] McMahon, pp. 443, 444. Judge Brown (of the supreme bench of Baltimore) concurs with McMahon and says that "all freemen were not, as such, entitled by virtue of the charter, to vote for delegates to the General Assembly. If they had been so entitled none could have been excluded for want of property." Brown: Civil Liberty in Maryland, p. 9. (note), 12.

and though attendance at the early Assemblies may not have been compulsory, yet those specially summoned, freemen or land owners, must personally attend or be mulcted.[1] Bozman is in error when he says that a Nicholas Gwyther "petitioned to have vote in the house as a *freeman* of the province." Gwyther petitioned simply for his freedom and not for right to sit in the Assembly.[2]

The elective franchise in Maryland, although broad enough previous to 1681 to include all *free men*, did not include *free women*. Mistress Margaret Brent, a noted lawyer and military commander in the province, asserted her right to sit in the Assembly of 1648, both in her own name and as attorney to the proprietary. The freemen recognized her great services in saving the province during Ingle's rebellion, but were not prepared to grant her all the civil rights of a freeman. Governor Greene peremptorily refused to allow Mrs. Brent a seat in the house, and she, in turn, protested against all the proceedings of the Assembly.[3]

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[1] "The freemen bownd to attend the Assembly appeared, except Mr. ffenwick, Mr. Thorneborough, Mr. Brookes and George Saphyer."

"Summons to George Saphyer to be att the Assembly forthwith uppon sight." Archives, 1647/8, p. 215.

[2] Compare Archives, 1647/8, p. 220 with Bozman, II., p. 322.

[3] Archives, 1647/8. Kilty, p. 104, (note). Bozman, II., p. 323. Brown: Civil Liberty, p. 16, (Maryland Hist. Society). The Assembly of 1649, in a letter to Lord Baltimore, makes this remarkable statement about this estimable and strong-minded lady: "As for Mrs. Brent's undertaking and medling with your Lordship's estate here, (whether she procured it with her own or other's importunity or no) we do Verily Believe and in Conscience report, that it was better for the Collony's safety at that time in her hands, than in any man's else in the whole Province, after your Brother's death; for the Soldiers would never have treated any other with that civility and respect, and though they were even ready several times to run into mutiny, yet she still pacified them till at the last, things were brought to that strait that she must be admitted and declared your Lordship's Attorney by an order of Court (the copy whereof is herewith inclosed), or else all must go to ruin again, and then the second mischief had doubtless been far greater than the former." Archives, 1649, p. 239.

II.

THE HUNDRED.

On the Eastern Shore of Maryland, in Talbot county, there is an election district which for many years has borne a name whose origin has been a mystery to most of the inhabitants, viz., the district of *Bay Hundred.* The name of this county subdivision is all that survives of an institution which dates back to the very beginning of the history of the State. The first civil divisions of the infant settlement were called *hundreds.* Before the county, the town, the manor, or the parish were instituted or erected, the hundred had been adopted by the freemen of the province as the territorial division most suitable to them in their peculiar isolation in the New World. It is an interesting coincidence that the colonists of Maryland were led to adopt an institution identical, at least in name, with the institution first framed by bands of Angles and Saxons, upon their arrival in old England, a thousand years before.[1] The institutional resemblance in the two widely separate countries may have been purely accidental, but they illustrate the tendency of peoples in the same stage of development, or when placed within the same environment, to adopt for

[1] "It is very probable, as already stated, that the colonists of Britain arranged themselves in hundreds of warriors; it is not probable that the country was carved into equal districts. The only conclusion that seems reasonable is that, under the name of geographical hundreds, we have the variously sized *pagi* or districts in which the hundred warriors settled." Stubbs: Const. Hist. of Eng., I., ch. 5, par. 45.

their political machinery, the same or similar institutions. This is especially true of the Teutonic races.

The hundreds of Maryland were in origin a geographical division, and so they continued to remain. A personal hundred, as an association of a hundred families, or a hundred soldiers, was unknown in the history of the province. But although the oldest civil division in the province was the hundred, this term was not applied to the settlement at the mouth of the Potomac until several years after the colony had been seated. The name first applied to that part of Maryland where the colonists first settled was Augusta Carolana.[1] The undefined territory comprised within its boundaries was subject to no special form of local government. To all purposes the governor of the little band of settlers was for the first few years an almost absolute monarch. The commissions issued by the lord proprietary gave the governor, Leonard Calvert, an almost unrestricted legislative and executive power. The proclamations of the governor were the only laws binding upon the colonists. This form of arbitrary government, however, could not continue. It was neither desired by the governor nor satisfactory to the settlers. But it is not improbable that even before a regular assembly of the freemen was held the governor had frequent conferences with the chief men of the settlers. Of these informal conferences no record has been kept. It is very improbable that respect was had to geographical differences in the selection of men to these early councils. It was not until writs were issued in legal form and through regular officers to the freemen to meet in regular assembly that the necessity was felt for the separation of the province into civil districts of some kind. These original election districts were termed *hundreds.*

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[1] "The thirty miles of territory, immediately around the place, which had been faithfully purchased from the natives, received the name of Augusta Carolana, in honor of the reigning King, Charles I." De Vere: Romance of American History, p. 205; also, Father White: Relatio Itineris in Marylandiam.

The settlers of Maryland landed near the present Point Lookout, in March, 1634 [N. S.]. In February, 1635 [N. S.], a general assembly of the freemen was held and certain laws enacted.[1] But the records of this Assembly have been lost and nothing is known concerning representation in it. There is no evidence of any territorial subdivision of the settlement at the time of this Assembly. The first regular Assembly of the freemen, of which any proceedings have been preserved, was convened on January 25, 1638. At this Assembly all of the delegates, except those summoned by special writ, are designated by the hundred in which they had their residence.

The first and most important use made of the hundred of the province was evidently for the purpose of registering the inhabitants as members of the community, and of recording the domiciles of the freemen. The hundred was laid out, bounded and named by proclamation of the governor. Before issuing the proclamation it is probable the governor conferred with his council, composed at first of three or four freeholders of good standing.[2] At the opening of the Assembly, held at St. Mary's, January, 1638, there were freemen from the hundreds Mattapanient, St. Mary's, and St. George's, not including the Isle of Kent, which was now virtually a hundred. St. Michael's hundred was soon after-

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[1] See Archives, 1637/8, p. 23.

[2] "Then stood up Henry Bishop (in the Assembly) and exhibited himself Burgess for Saint Leonard's hundred, and pleaded that it was acknowledged to be a hundred upon the probate of a will, whereupon he was answered that it was not yet created a hundred and last election of Burgesses they were joyned to Mattapanient hundred, and that they had no writ to elect Burgesses, and therefore their election not legal and their assembly to that purpose unlawful." Md. Archives, 1642, p. 130.

In the commission issued by Governor Calvert to Robert Vaughan, bearing date of January 5, 1638 [N. S.], the preamble begins: "Whereas, the west side of St. George's river is now planted by several inhabitants, and is thought fit to be erected into a hundred, by the name of St. George's hundred," &c. Vaughan was appointed the constable of the hundred. See Bozman, II., p. 45.

wards created and the name of Mattapanient hundred changed to Conception hundred.[1]

In the commission to Capt. Evelin touching the General Assembly, he was directed to appoint a "generall assembly of all the freemen of this province."[2] The meeting was a pure democratic one. But although all the freemen were privileged to attend, all those summoned were not obliged to be present in person. Those freemen who could not attend were allowed to send a deputy or deputies to represent them.[3] No directions were given concerning the territorial apportionment of these deputies. But before the opening of the session of 1638/9 an order in council made the hundred the election district. This Assembly was composed of two or more burgesses elected by the freemen of Kent, of five *gentlemen* summoned by special writ, and of the burgesses elected to represent the freemen of the several hundreds of St. Mary's county. Summons was directed to all the freemen of the different hundreds to appear before the Secretary of the province at the time and place specified, and to make choice of their deputy or deputies.[4] The

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[1] Archives, 1641/2, p. 114.

[2] Supra, 1637, p. 1.

[3] Capt. Evelin was directed "to endeavour to perswade such and so many of the said freemen as you shall thinke fitt to repair psonally to the said assembly at the time and place prefixed; and to give free power and liberty to all the rest of the said freemen either to be pñt at the said assembly, if they so please; or otherwise to elect and nominate such and so many persons as they or the maior part of them so assembled shall agree upon to be the deputies or burgesses for the said freemen, in their name to advise and consult of such things as shalbe brought into deliberation in the said assembly." Archives, 1637, p. 1.

[4] A memorandum of election returned by the secretary reads: "14th of February, 1638 [o. s.], this day came before me Richard Garnett, Senior, Richard Lusthead, Anum Benum, Henry Bishop, Joseph Edlo, Lewis Freeman and Robt. Wiseman and chose for the burgess of the hundred of Mattapanient Henry Bishop, and have given unto him full and free Power for them and for every of them to be present in their names at the next Assembly as their Burgess or deputy, and in witness thereof have hereunto sett their hands." Archives, 1638/9, p. 28.

returns of election made by the Secretary indicate that the 7 freemen of Mattapanient hundred chose one deputy, the 14 freemen of St. Michael's hundred chose two deputies, the 17 freemen of St. Mary's hundred chose two deputies, the 20 freemen of St. George's chose one deputy, and the 50 freemen of Kent made choice of two deputies to represent them in the General Assembly.[1] There was no limit to the number of deputies to be chosen by the freemen of any hundred. The only check upon a too numerous delegation was the expenses of the deputies, which were borne by the freemen of the respective hundreds.[2] In those days the expenses of travelling to the Assembly and of lodging at the little town of St. Mary's were quite considerable.

Before the close of the session of 1638/9, a bill was introduced and finally enacted defining more sharply the rights of representation in the general legislative body of the province. The right to a seat in the Assembly was granted to lords of manors, to gentlemen summoned by special writ, and to hundred burgesses. Instead of the writ of election being directed to the freemen of the hundred, it was sent to the commander of the hundred, or, in his absence, to the high constable of the hundred, or, "in defect of a constable," to the sheriff of the county. The election was ordered to take place at some place in the hundred, and not, as hitherto, at the town of St. Mary's. The election was *viva voce* and took place before the chief officer of the hundred. Each hundred had the privilege of choosing any number of delegates. All the freemen and freeholders were

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[1] Archives, 1638/9, pp. 28–31.

[2] At the session of Assembly held in July, 1642, a committee of six members on ways and means was appointed. The house "gave the committee power to allow the acco^{ts} of Burgesses and officers of this Assembly, and to assess the sums due from every hundred upon all the freemen of every hundred (not called by special writt) and appointed that such assessment entred upon record shall be a judgment to all respects, and that the sheriff shall collect the said leavys." The pay per diem of the burgesses was 40 lbs. of tobacco. Archives, 1642, p. 144.

summoned to take part in the election. But no freeman could come to the Assembly in his own right. The Assembly was to be composed only of delegates elected by the freemen and of the gentlemen summoned by special writ.[1]

The operation of this good law, tending so strongly in the direction of local self-government, was defeated by the veto of the Lord Proprietary. It is not stated on what grounds he could object to the bill.[2] He showed his wisdom, however, by incorporating in his subsequent proclamations summoning the Assemblies the main features of the bill passed by the Assembly of 1638/9. The number of deputies allowed in these proclamations to any one hundred varied from one to four; the polls of the hundred were designated in the proclamations to be held at some place within the hundred.[3] The freemen of St. Clement's hundred being a "small company in number" [7], were allowed to select Lieutenant Robert Vaughan as their deputy.[4] On the other hand, the freemen of St. Mary's, not being satisfied with one

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[1] The law reads: "And from henceforth such person or persons only so elected and chosen out of and for every hundred within this province (and such persons as shall be personally called by writt as afore) shall have a place, voice and seat in all or any Generall Assembly, hereafter to be held within this province." Archives, 1638/9, pp. 74, 75.

[2] The lord proprietary asserted his prerogative not only of regulating the meeting and composition of the Assemblies, but also claimed the initiation of all laws. The latter privilege the freemen of the province refused to assent to, and after a short but decisive struggle the Assembly secured the right to initiate laws. But no objections were raised to the proclamation of the Governor, asserting that "the manner of summoning Assemblies within this Province is wholly left to the L^d^ Prop^rs^ discretion." See Proclamation, Archives, 1650, p. 259.

[3] The expense and inconvenience of making the capital of a colony the only polling place is well illustrated in the history of South Carolina. The historians of this colony claim that the revolution of 1719, by which the proprietary government was brought to an end, was largely due to the refusal of the proprietors to allow any polling place in the colony other than Charleston. Rivers: History of South Carolina, ch. 10.

[4] Archives, 1640, p. 89.

deputy, were allowed by the Governor, at their urgent request, to choose two burgesses.[1]

For a number of years (as late as 1651), St. Mary's was the only county subdivided into hundreds. The other counties, Kent, Anne Arundel and Charles, were so thinly settled compared with St. Mary's that it was doubtless found inexpedient to subdivide them further.[2] When Cromwell's commissioners usurped the government of the province in October, 1654, the hundred representation was entirely swept away and the Assembly was composed of members chosen by the several counties. Two burgesses were allowed St. Mary's county, and probably the same number to each of the other counties.[3] After the surrender of the government to Lord Baltimore, March, 1658, no further reference is made in the Acts of Assembly to the hundreds. The writs of election are directed, not to the freemen of the hundred collectively, or to the constables of the hundreds, but to the sheriffs of the several counties.[4] But the hundreds still continued to be used as polling places. It is probable that the deputies were still chosen by hundreds and not by counties. In the proceedings of the Assembly, however, the members are spoken of as from this or that county.

The hundred and county delegates were called *burgesses* by resolution of the Assembly.[5] In writs, summonses and

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[1] "The ffreemen of St. Maries hund^{d} earnestly request the Gov^{r} to giue them power of choosing 2 Burgesses, alleaging that hund^{d} to bee the ancientest hund^{d} & the first seated wthin this province under his L^{ps} gouernm^{t} who granted their request and desyre accordingly." Archives, 1650, p. 260.

[2] See Archives, 1650, p. 298, and 1650/1, p. 313.

[3] See Archives, 1654, pp. 339 and 340.

[4] Archives, 1659/60, pp. 381, 382.

[5] "The said several persons, so elected and returned as aforesaid, shall be and be called burgesses, and shall supply the places of all the freemen consenting or subsenting to such, their election in the same manner and to all the same intents and purposes as the burgesses of any borough in England, in the Parliament of England."

proclamations the terms deputies, burgesses, delegates and representatives are used synonymously.

A second important use made of the hundreds of Maryland was in the collection of public revenues. The hundred was made the basis of the tax levies. Much of the proprietary's revenues arose from the quit-rents and moneys deposited on the taking up of lands. Fines and customs duties supplied another portion. But the expenses of the civil list were largely met by a direct tax upon the inhabitants. This tax was collected in the hundreds, and by their officers. The lord proprietary, as the supreme land owner of the province, was entitled to the quit-rents from the leaseholds and freeholds for his personal benefit. But the expenses of his public officers were met by a public assessment levied upon all the property holders. This assessment was collected through the hundreds. The constable of each hundred was required to keep a record of all the inhabitants in his hundred, and especially a record of persons liable to be taxed. The persons upon whom a tax was levied were termed taxables and titheables.[1] Before the introduction of the system of levying a tax upon the taxables, it had been customary to levy a direct assessment upon every property holder, according to his estimated estate.[2] The tax commission which made the so-called levies was composed of one or more

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Bozman, II., p. 599. The term "burgess" was also applied in Virginia to the representatives in the Assembly, "chosen from every town, hundred and plantation." Burk: Hist. of Va., I. p. 103. The Virginia Assembly was sometimes called "House of Burgesses." Chalmers' Annals, ch. III.

[1] By a law enacted in 1662, taxables included all males over 16 years of age, born in the province; all male servants and slaves over 10 years of age and all female slaves over 20 years of age. Archives, 1662, p. 449.

[2] "In the early days of the province the personal estate of the colonists was taxed by the Assembly for the defraying of public expenses, but the lands granted to them were not directly taxed, as they were considered sufficiently burdened by the payment of the quit-rents and alienation fines to the proprietary." Mayer: Ground Rents in Maryland, p. 21; also Bozman, II., p. 146; Archives, 1638/9, pp. 59, 60.

persons from each hundred of the province, or from each county, not yet subdivided into hundreds. This commission met at St. Mary's town. The method of levying was generally by means of a poll tax.[1] The committee of six members appointed by the Assembly in 1642, were empowered "to allow the acco^{ts} of burgesses and officers of this Assembly, and to assess the sums due from every hundred upon all the freemen of every hundred (not called by special writt)."[2] Each hundred was assessed for the expenses of its own burgesses and for a proportionate part of the expenses of the general officers of the Assembly. A memorandum of the tax commission, referring to St. Mary's hundred, reads: "And the sum of 1,260$^{lb.}$ [tobacco] was assessed upon the hundred for the payment of the said acco^{t} and charge and hazard of collecting it, and it was assessed to be levied of the persons and after the rates following, viz^{t} Elizabeth Beach, 30^{lb}, Mr. Howkins 30^{lb}," etc. A similar assessment was levied upon each hundred.[3] There is no record what redress a tax payer had if he considered himself too highly rated. Probably he could appeal to the governor and council. A law of 1649 gave the inhabitants of the hundred the right of electing their two tax assessors.[4] In this law no reference is made to the tax assessors of the Isle of Kent. Probably in fiscal matters it was still regarded a hundred of St. Mary's county.[5] A law of the following year directed that the commission should consist of one or

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[1] See Archives, 1647/8, p. 232; 1649, p. 237; 1650, p. 269; 1663, p. 506.

[2] Archives, 1642, p. 142.

[3] Archives, 1642, pp. 142, 146.

[4] "It is ordered by the authority of this psent Assembly that the governor shall issue out writts to the sheriff of St. Maries county to summon two inhabitants out of every hundred, to bee chosen by the hundred, to meete together at some time and place to bee appointed by the governor in October next and make assessment on all the inhabitants of each hundred of the charge that shalbe incurred this psent yeare." Archives, 1649, p. 238.

[5] Bozman, II., p. 48 (note).

more assessors from each of the hundreds of St. Mary's, and from the counties of Anne Arundel and Kent.[1] The laws do not specify where the taxes should be paid, nor by whom collected. At a very early period, however, the sheriffs of the several counties were made the tax collectors, the taxes being made payable probably at the court house, or at the public ordinary. Certain special taxes, however, were not collected through the hundreds. The subsidy granted Baltimore in 1641 was levied in a unique way, but yet in a manner which had often been practiced in old England. The peculiarity of the tax lay in its assessment upon families, instead of upon the inhabitants in general of the hundreds. Every freeman, freewoman, and every servant, was taxed through some family. If any freeman refused to pay the tax advanced by the family in which he was assessed, he was held amenable to the law.[2] The assessments were to be paid at the plantation "appointed or well liked of in the hundred" by the collectors.[3]

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[1] Archives, 1650, p. 298; see also Archives, 1650/1, p. 313.

[2] "Where any house keeper or house keepers payes for any freeman or freewoman as belonging to his or her or their family, such house keeper or house keepers so paying may charge the said paym^{t}. to the account of such freeman or freewoman or recover it by accou^{t}. of debt, in which case a freeman or freewoman is to be judged such as are in covenant for wages or hyre for their work or service. . . . . And where it is uncertain to what family any artificer, seaman or other person having no certain abideing place doth belong, he shall be charged to that family where he had his last abideing." . . . . Any freeman arriving in the province before a certain date "shall be accounted to that family where he shall abide or sojourn for the greatest part of his abideing after such his comeing into the colony." Archives, 1641/2, pp. 123-4.

[3] It is interesting to find that the provisions of this temporary law, by which every taxable was assessed through some family, became part of the organic law of the province. A law enacted in 1719 reads: "It shall and may be lawful for any constable of any hundred, in any of the counties within this province, upon finding any such single person or freeman in their respective hundreds, who cannot procure some house-keeper within such hundred to give him in as a taxable, nor make appear that he is a resident, or taken as a taxable in some other hundred or county, to carry such

The hundred continued to remain the fiscal district of the province, though the methods of levying the taxes varied from time to time. The tax commission, composed of the hundred and county assessors, still continued to meet at St. Mary's to levy taxes for the general expenses of the government. To meet the local indebtedness due for local improvements, &c., a new method was adopted. The constables of the hundreds were required to go to the "severall and respective houses in their hundred to enquire of the masters of the respective familyes after the number of taxables in each family." A list of all the taxables of the hundred was sent by the constable to the sheriff of the county, and another list was sent to the county court "there to be sett up." In case "any master, dame, or other cheife person of a family" refused to make out a full list of the taxables of the family, such person was liable to a heavy fine. The constable derelict in duty was liable to a fine of 500 lbs. of tobacco.[1] Previous to the enactment of this law of 1676 the constable was amenable to the governor, from whom directly or indirectly he received his appointment. The tax was collected by the sheriff of the county.

The hundred continued to remain the fiscal district of the counties probably even after the war of the Revolution. A record from St. John's Parish of Baltimore, bearing date August, 1779, reads: "Ordered that the Register [of the Parish] procure from the Assessors of the several hundreds in this parish a list of the Parishioners' names."[2]

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person or freeman before the next justice of the peace for such county, who is hereby empowered and required to commit such person, or freeman, into the sheriff's custody, until he shall procure some house-keeper to return him as a taxable, and be answerable for his levy." Bacon: Laws of Md., 1719, ch. 12.

The connection of the individual of the hundred with the family, for fiscal purposes, in Maryland, is somewhat analogous to the relation of the individual with the tithing in England, for the maintenance of peace and the levying of taxes. See Stubbs: Con. Hist. of England, I., ch. 5.

[1] Archives, 1676, p. 538-9.

[2] Parish Institutions of Maryland, Studies I., No. 6, p. 41.

It is interesting to find that when the tide of revolution began to move southward in 1774-5, the expenses for arms, ammunition, &c., in Maryland, were raised in the several counties through the hundreds. The sum of £10,000 was levied by the Provincial Convention upon the counties, to defray for the armament of the counties. Immediately from St. Mary's to Frederick and Baltimore counties the freemen assembled in their respective hundreds to devise measures to collect this extraordinary assessment.[1]

The most interesting use made of the civil division of the hundred, and the one which connects it most intimately with the history of the hundreds of England was in connection with the militia of the province. According to the best informed historians, the hundreds, at least of England, were originally associations of a hundred warriors, or of bands of a hundred families, following the leadership of their chief. Bishop Stubbs is of the opinion that when the colonists of Britain had arrived in the territory, they had "arranged themselves in hundreds of warriors." He says it is reasonable to believe that "under the name of geographical hundreds, we have the variously sized pagi or districts in which the hundred warriors settled."[2] It was not for a similar purpose, however, that the institution was introduced in Maryland.[3] The settlers merely borrowed that civil division

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[1] The inhabitants of Baltimore county, at a meeting assembled in Baltimore town, Jan. 16, 1775, passed a number of stirring resolutions. Among others it was "Resolved, unanimously, That subscriptions be opened in each hundred in this county under the direction of the committees of the respective Hundreds, for raising contributions to supply the necessities and alleviate the distress of our oppressed brethren of Boston." Scharf: History of Md., II., 173.

[2] Stubbs: Con. Hist. I., ch. 5, par. 45.

[3] Many other theories, far less probable than that advanced by Stubbs, have been published by historians and others as to the origin of the term *hundred*. Sweet (Anglo-Saxon Grammar, p. 18) and Bosworth (Dictionary) say that *hund* in Anglo-Saxon seems originally to have meant 10. The suffix *ert* or *red* simply meant a

from Old England which seemed best adapted to their new environment. It is true, however, that an analogy not altogether fanciful, might be drawn between the military basis of the hundreds of Maryland and of the hundreds of Britain. In each case the colonists were bands of freemen, in a hostile country, under the leadership of a chief possessed of extraordinary powers. In each case the colonists had determined to possess themselves of the soil of the aborigines. In each case the whole adult male population was subject to military duty at the summons of the *dux* of the band,[1] in Britain termed the ealdorman, and in Maryland the Lieutenant General.

The peaceable disposition of the majority of the Indian tribes of Maryland tended to reduce very considerably their fear of any hostile invasion, and the military duties of the settlement were subsequently entrusted to a small number of freemen. These guardians of the public safety were known as the "rangers," and the "trained bands." The rangers were appointed by the governor without respect to geographical distinctions. The trained bands or the local militia were distinctly hundred organizations and in charge of hundred officers.

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stroke, as one would make in counting. This theory would make the *hundred* and *tithing* almost synonymous terms.

One writer says hundred meant "a division of a county, perhaps so called from containing a hundred securities for the king's peace." Another writer says the term is probably due to the hundred "once containing an hundred manors," (Scott: Dictionary, London, 1755). Some writers see an affinity between the Latin *centum* and the German *zent* (name of the civil hundred). The word *canton* is said to have been related to *centum* and *zent* and Kante (German). Lenormant has a note upon the number *ten* as used by early Shemitic races. See Beginnings of History, 233 et seq.

A number of uses to which the tithing in England was put, as described by Stubbs, were identical with the hundred administration in Maryland; e. g., the police, fiscal, and the election purposes. See Stubbs: Con. Hist. I., c. 5, par. 39-45.

[1] In the first commission issued by Lord Baltimore for the government of the province, the governor was given "absolute authority about and in all matters of warfare by sea and land." Bozman, II., p. 572, note VI.

The first act of legislation referring to the public safety of the province, was the statute of March, 1638/9, entitled "An Act for military discipline." According to this enactment every householder was required to secure a "bastard muskett," "a pair of bandeleers," and ammunition for himself and each person of his house able to bear arms. A monthly inspection of each dwelling by military officers was ordered. "Upon any alarm every householder of every hundred" was required to send his quota of men, completely armed, "to such place as shall be appointed or notified by the commander or high constable or other officer of the hundred."[1] This good law was, however, vetoed by Lord Baltimore, not because of any objections to the provisions of the Act, but because of his refusal to recognize the right of the Assembly to initiate laws.[2]

Within a few years, however, an order in council was passed by which "trained bands" were organized in each hundred, in charge of regularly appointed officers. An act of Assembly of 1642 regulated the fees of these officers.[3] It seems from this act as if every able-bodied man must join the local militia of his hundred.

The inroads of the Indians upon the little colony towards the close of the year 1642 caused the freemen to take stringent measures to protect themselves from further danger. The Assembly ordered an expedition to be made against the "Sesquihanoughs" and other tribes. The Lieutenant General was authorized "to take out of every county or hundred within the Province the third man able to beare armes," to go upon the expedition. The several hundreds were required to furnish all necessary arms, ammunition and victuals for the use of the soldiers. An assessment was levied upon every householder and freeman. "And where it is

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[1] Archives, 1638/9, pp. 77, 78.
[2] Bozman, II., pp. 67, 94.
[3] Archives, 1642, p. 159; also 1642, p. 193.

uncertaine to what family or hundred any one doth belong, he shalbe charged to that family, wherein he had his last abiding at or before the time of the assessment." Any ammunition, victuals, &c., left unused after the expedition had returned were distributed to the counties proportionally, and from the counties to every hundred, and from the hundred to particular persons, proportionally to their charge."[1]

An act of February, 1644/5, authorized the governor to keep a small standing army at "Pascatoway," but only for that year. An assessment of a barrel of corn or fifty pounds of tobacco was levied upon "every head able to beare armes," within the province, to furnish the garrison. The governor was authorized to appoint "one or two places in every hundred" to receive the taxes.[2]

The most explicit statute passed for securing the province against the restless savages which surrounded the settlements on all sides, was the act of 1649, and in this act the hundred stands out very prominently. A number of settlers had planted far up upon the Severn, many miles from the forts of Kent and St. Mary's, and additional safeguards against incursions of the red men were found necessary. This act allowed the freemen of each hundred to assemble together at the places selected by the chief officer of the hundred, and to adopt such measures as were found necessary "for the defence of each particular hundred." In case of danger the alarm was sounded by means of "rounders" of from three to five guns. The call to arms must be repeated by every master of a family by a salute of three guns, under penalty. The commander of the hundred was authorized to impose a penalty upon any one sounding a false alarm and upon any master not equipping his household as directed, or allowing any of his men to "go out of the limits of the plantation where he is usually resident, either to

[1] Archives, 1642, pp. 196-7.

[2] Archives, 1644/5, p. 205. This act was passed at the time of Ingle's rebellion.

church or upon any other occasion whatsoever without his arms well fixed and a sufficient quantity of powder and shot about him." The sounding of the alarm from hundred to hundred, in case of invasion, is suggestive of the pursuit of a thief, from hundred to hundred, upon the "hue and cry" of the hundred constable.[1]

The Commonwealth Commissioners, in 1654, seem to have discarded the hundreds as a civil and military division, and directed that officers be appointed in each county to take "view of armes" and to train the inhabitants in military tactics.[2] But after the restoration of the government to Lord Baltimore, the hundred was again made the basis of the local militia. A statute of 1676 authorized the governor to appoint "two sufficient persons in every hundred to impress all manner of provisions and other necessaries" for supplying the needs of troopers and rangers going out upon public expeditions.[3]

The hundred remained the basis of the military administration of the government throughout the entire history of the province. The militia and trained bands of the hundreds were disciplined by officers appointed and instructed either by orders in council or by legislative enactments. A law enacted in the year 1715 gives minute directions concerning the equipment, the duties, and the pay of the officers and the rank and file of the military bands.[4]

When the conflict of 1776 began in America, it was the hundreds of Maryland that responded to the "alarm" sounded by the towns of Massachusetts, and that echoed the

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[1] Archives, 1649, p. 253. This act is significant as being the first instance of local self-government allowed to the hundreds; the equipment of the hundred militia being decided by the "major voice of the freemen." It was in this year, 1649, that the "Act of Religion" [Toleration] was passed. The Assembly at this time seems to have been controlled by the Puritans of the Severn.

[2] Supra, 1654, p. 347.

[3] Archives, 1676, p. 499.

[4] Bacon: Laws of Md., 1715, ch. 43.

news to the counties of Virginia and the parishes of Carolina. The veterans of the Indian wars and the raw recruits of the militia by common instinct gathered together in their respective hundreds to answer the call of their New England comrades. The newspapers of the times contain frequent notices of these hundred meetings. One account reads: "this day the inhabitants of Elk Ridge Hundred in Anne Arundel county met, formed themselves into a company, and chose their proper officers, being of opinion that a well-regulated militia will contribute to the preservation of American liberty."[1] But though the popular will was voiced in the hundreds, official action upon the war was taken by conventions of county delegates, as in the appointment of committees of safety, &c.

The most complete hundred organization in the province was the so-called "Ile of Kent," or as officially termed "Kent Hundred." The distance of the island from the settlement upon the Potomac, the struggle occasioned by the refusal of Claiborne to surrender the island to Calvert, and the importance of the Kentish settlement as an Indian factory, combined to magnify Kent into an importance almost equal with the settlement at St. Mary's. An act of Assembly passed at the session of 1638/9 enacted, that "the island, commonly called the isle of Kent, shall be erected into a hundred, and shall be within the county of St. Marys (until another county shall be erected of the eastern shore, and no longer) and shall be called by the name of Kent Hundred."[2] This act, together with all the acts of this session, was repealed by the Lord Proprietor, but the provisions of the bill seem to have been largely incorporated in subsequent orders in council. The statute enacted that the chief officer of Kent should be termed "commander." This term was used by the Lord Proprietor in the commission issued in February, 1639/40, appointing Mr. Giles

[1] Scharf, II., p. 169 (note): Maryland Gazette, 1775, 1776.
[2] Bozman, II., p. 607, note XXXI. Archives, 1638/9, p. 55.

Brent, "commander of the isle of Kent."[1] The commission did not recognize the island as any special civil division, but it did not regard it as a county. The commission issued in a previous year (February 9, 1637/8), appointing three gentlemen "to be justices of the peace within the said island to hold a *court-leet* in all civil actions not exceeding 1,200 lbs. of tobacco; and to hear and determine all offences criminal within the said island, which may be determined by any justice of the peace in England,"[2] would imply that the governor's council regarded Kent as a hundred. The commissions issued from time to time to the commanders of Kent, gave them a range of powers in some respects scarcely inferior to those possessed by the governor of the province.[3] The commander was, in fact, a deputy governor. He was the chief magistrate of the district, and its military chieftain. He held court, levied taxes and gave judgment in civil and criminal cases. He was assisted by a council of three gentlemen.[4] Kent was, however, an anomalous district, and while not yet raised to a county, it had advanced beyond the ordinary hundred. It is not definitely known when Kent was formally erected into a county, by order in council. An order of the Assembly of 1642 alludes to it incidentally as a county.[5]

It has been seen that the hundred was a very important civil division in the early history of Maryland. It was essentially the fiscal, the military and the election district of

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[1] Bozman, II., p. 614.

[2] A *court-leet* was a court of record, held annually within a manor or a hundred. It had jurisdiction both in criminal and civil matters. See Abbot: Law Dict., I., p. 315.

[3] Bozman says the term "commander" was borrowed from Virginia. See Bozman, II., p. 44, 138 (note), and Burk: Hist. of Va., I., p. 282. When Gov. Calvert was about to depart from Maryland, in 1642, he appointed Secretary Lewger his deputy, and made him "commander of St. Mary's County." Archives, 1642, p. 202.

[4] Bozman, II., p. 614.

[5] The passage reads: "and the sum of 2944[l] [tobacco] was assessed upon the County [Kent] for the payment of its burgesses' account."

the province.[1] The "taxables," the "trained bands" and the "burgesses" were terms particularly applied to the hundred. In a sense there is an identity in aim in the services rendered to the State by the tax-payer, the militia and the legislator. It is true that in modern times there is a diversity of opinion as to these three services. The former is generally regarded as a burden, the latter as an honor, and the other service as a source of amusement or recreation. But in the early history of new settlements, each of these three services, paying taxes, bearing arms, and making laws, is regarded as a burden and a duty. We may regard the hundred of Maryland, then, as that civil division of the province through which the government receives the services of the freemen; these services were rendered either in labor, in kind, or in counsel. It will be found that the counties of the province became the administrative and the judicial districts.

Incidentally the hundreds were sometimes employed for other purposes than those above mentioned. It was in the hundreds, as was the case with the towns or townships of New England, that the popular will found expression. It has been seen how effectively they were employed during the Revolutionary war in the raising of the supplies to carry on the war. These hundred meetings were, in fact, "town-meetings" of a most democratic type. Taxes were levied, committees appointed, resolutions adopted and petitions framed. "Suspects" were put under surveillance by the hundreds, and obnoxious citizens driven from the district. The same democratic spirit in the hundreds was witnessed on previous occasions. We have seen that at a very early period of colonial history, the freemen met in their respective hundreds to frame laws upon the defence of the province; the resolutions being enacted by the "major voice of the freemen."[2] We find the freemen of the hundreds meet-

[1] There is no instance of the hundred as a judicial district; the hundred court is mentioned a few times in the earliest records, but no account of their proceeding, if ever held, has been preserved.

[2] Archives, 1649, pp. 253-4.

ing from time to time to petition the Assembly,[1] or to send an address to the English sovereign.[2]

The officers of the hundred were generally appointed by the governor or the council. But, at times, the pay of these officers and their duties were regulated by Acts of Assembly. The officer peculiarly belonging to the hundred was the constable. He survived every revolution in the palatinate and is noticed many years after the overthrow of the proprietary government. An Act of Assembly, of March, 1638/9, directed that the commander of each hundred should appoint annually at "the first hundred court in every hundred held after Michaelmas," a high constable of the hundred, "to execute all precepts and warrants to him directed," and to have the same power and authority as "a high constable of any hundred in England hath or ought to have within his hundred by the law or custom of England."[3] The lord proprietary repealed this enactment as it infringed on his prerogative of initiating laws and of appointing the executive officers of the province. The office of the high constable, however, already existed previous to this Assembly. Among the burgesses sitting in the Assembly of 1637/8 was "Serg^{t} Rob^{t} Vaughan, highe constable of St. George's hundred."[4] The high constables continued to be appointed by the governor. They occupied the same position in the hundred as the sheriffs did in the county. They were in reality under-sheriffs. The writs of election directed to the high constables were couched in the same words as those directed to the sheriffs of the county.[5]

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[1] Archives, 1676, p. 498.

[2] Peabody Calendar of State Papers (Md. Hist. Soc.), 1688, Oct. 22.

[3] Archives, 1638/9, pp. 54, 55.

[4] Supra, 1637/8, p. 2.

[5] "These are to will and require you to assemble all the Freemen as you may of your hundred, at a certain time and place by you to be prefixed within the said hundred, and then and there to require them to make election of one or two Burgess or Burgesses for the next General Assembly," &c. A writ to high constable of St. Clement's hundred. See Archives, 1641/2, p. 115.

As the new counties began to be erected and the hundreds began to increase in number, the duties of the sheriff began to increase at the expense of his subordinate, the constable. The terms "constable" and "high constable" were, at first, synonymous, for we find Robert Vaughan called both the constable and the high constable of St. George's hundred.[1] In the later history of the colony these officers were called simply constables. At first their duties were specified in their commissions.[2] Gradually, however, they became the guardians of the peace of the hundred, or the petty administrative officers. We find them acting as census-takers of the hundred,[3] as engaged in the serving of writs, &c.,[4] or occupied as inspectors of corn, &c.[5] In some instances the hundred is called the "constabulary."[6]

The most important duties of the constable related to his position as the keeper of watch and ward, the guardian of the public peace, the police officer of his district. A clause in an Act of Assembly, of the year 1661, reads: "You shall sweare that you shall well and truely serve his Lop. in the office of constable, you shall see and cause that his Lops. peace be well and duly kept according to your power, you shall arrest all such persons as in your presence shall comitt or make any ryott, affray or other breach of his Lops. peace, you shall doe your best endeavor upon complaynte to you made to apprehend all fellons, barrettors, ryotters or persons riotously assembled. And if any such offender shall make any such resistance with force, you shall leavy hue and cry and shall pursue them untill they be taken," &c.[7] The form of this oath was probably copied from an English statute.

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[1] Compare Bozman, II., p. 45 and Archives, 1637/8, p. 2.

[2] In his commission as constable, Vaughan was specially ordered to make "diligent search and inquiry, for persons who furnish the Indians or savages with arms and ammunition." Bozman, II., p. 45.

[3] Archives, 1676, p. 538.

[4] Bacon, 1719, ch. 12. Archives, 1661, p. 410.

[5] Archives, 1654, p. 350.

[6] Archives, 1661, p. 410.

[7] Archives, 1661, p. 410, and Bacon, 1715, ch. 15.

According to Alsop,[1] the office of constable in many hundreds was almost a sinecure. By Act of Assembly the constables were subsequently appointed by the justices of the county courts.[2] Among other petty officers of the hundreds were the tobacco viewers[3] or inspectors, assessors,[4] and road overseers.[5] At times the constable was called the sheriff's bailiff.[6]

The area of the hundreds in general is not positively known, but it is very probable they were much smaller than the subsequent election districts of the State.[7] It is possible that some of the present election districts are but the survivals in names and bounds of the old hundreds, but in many counties all of the old names of hundreds have disappeared and new names have been given to the districts; *e. g.*, in St. Mary's County, St. Inigoes is the only district bearing the name of one of the former hundreds. Cecil County, in 1807, is said to have had 15 hundreds and only 4 election districts.[8] It is somewhat peculiar that while in old England the parish was a subdivision of the hundred, the parishes of Maryland frequently comprised a number of hundreds.[9]

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[1] In one place he says, "here the constable hath no need of a train of Holberteers that carry more armour about them than heart to guard him." Alsop: "Character of the Province of Maryland," p. 48. (Anno 1666). There is no evidence that the order in council which directed the constable to whip Quakers to the bounds of his hundred was ever actually executed. See "Early Friends in Maryland," p. 8, (note).

[2] Bacon, 1715, p. 15.

[3] Archives, 1640, p. 97.

[4] Archives, 1649, p. 238. Ingle, Studies, I., No. 6, p. 41.

[5] Johnson, Cecil County, pp. 241-2.

[6] Bozman, II., p. 620.

[7] In 1775, Frederick County had 33 hundreds; at present it has 21 election districts. But the area of the county has been much decreased since the province became a State. Compare Scharf, II., p. 175, with Baltimore *Sun* Almanac, 1885, p. 61.

[8] Scott: Geographical description of the State of Maryland, p. 108.

[9] Parish Institutions of Maryland. Studies I., No. 6, pp. 2, 6, 32. Hanson's Laws of Maryland, Sept., 1770, ch. 18.

The term "baronie" at times met with in the old laws and records of the province, probably meant the hundred. The first subdivision of the counties of Ireland had been into baronies, corresponding according to some writers with the hundreds of England; but Spenser, writing in 1596, makes the county and barony of Ireland synonymous terms.[1] A law for the erecting of baronies in Maryland was enacted by the Assembly of 1637-8, but it was repealed. As this law was initiated by the freemen, it is not probable that the feudal barony was contemplated.[2] Kilty says no baronies, at least in the feudal meaning of the term, were ever erected in

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In the year 1696 the Maryland authorities sent to the English Government a list of the hundreds and parishes of the province. There were in all eleven counties. The number of hundreds in each ranged from two in Cecil County to ten in St. Mary's County. Baltimore County was subdivided into five hundreds, Anne Arundel into six, and Talbot into nine hundreds. In the entire province there were 71 hundreds. The names given to the hundreds afford curious study. In St. Mary's County we read of Resurrection, Newtown and St. Mary's city hundred. Nearly all the hundreds of this county were designated by names of saints. Each of the eight hundreds of Somerset county is named after an Indian term. The vocabulary seems to have been exhausted in some counties, and we read of hundreds known as "the lower part of Nanjemoy parish," "south side of Gunpowder," "lower part of Kent Island Bay." The number of parishes is stated in the report to be 30. Prince George's county was divided into hundreds but no parishes are mentioned. Generally the parish bounds are given. In Cecil county there were two parishes and two hundreds; as the same names were given to each, probably the two subdivisions occupied the same area. But in most cases the parish included one or more entire hundreds, and portions of adjacent hundreds. Kent Island formed one parish. See Liber H. D., No. 2, pp. 46-53. (Md. Hist. Soc.) Kent Island began its civil life as a plantation of the Old Dominion, Virginia. It became, successively, a hundred, county, and parish of Maryland, and is now an election district of Queen Anne county.

[1] Liber Hiberniae, VII., p. 374. Spenser: View of the State of Ireland, Dublin Ed. of 1809, p. 249.

[2] Archives, 1637/8, pp. 2 and 20. It may be urged against the view that the bill for *baronies* passed by the Assembly, and subsequently vetoed by the proprietary could not have meant *hundreds*, as understood in England, as this term was already in use as a civil division. But it is not improbable that the term hundred was

Maryland.[1] In the council proceedings there is mention made of a manor being located "in the baronie of St. Marys." The hundred of St. Mary's and not the county of the same name is probably intended.[2] The English barony was synonymous with the lordship and was a division of the hundred.[3]

It is interesting to note that although the hundreds have disappeared in Maryland, the term is still in use in Delaware, which for a half a century was claimed by the proprietors of Maryland as an integral part of their province. The name is employed there to designate the election districts. Scott, in his description of Maryland and Delaware, 1807, says the three counties of Delaware were subdivided into a total number of 23 hundreds. The census of 1800 is given by him in the hundreds. Baltimore hundred, Sussex county, Del., adjoins Worcester county, Md.

An Act of Assembly of the year 1824 gave the death blow to the hundreds of Maryland as a civil division. They had long ceased to serve the threefold purposes to which they had been put during the proprietary government, and had become simply the district of the constable. This officer had degenerated into a mere messenger and factotum of the county justices. He had long ceased to be the responsible and dignified gentleman mentioned by Bozman.[4] The

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used popularly before it had received legal sanction. Spelman, in his Glossary, published in England about the year 1626, says, "Baronia pro parte comitatus quam hundredum dicimus." See Bozman, II., p. 580.

The baronies proposed a generation later for South Carolina, by its proprietaries, throw no light upon the institution of the same name proposed in the Maryland Assembly. The Carolina barony contained 12,000 acres and was governed by a landgrave. Before a second barony could be erected, the first barony must contain at least 100 inhabitants. Rivers: Sketch of the History of S. C., pp. 349, 357.

[1] Kilty: Landholder's Assistant, p. 93. See also, Bozman, II., p. 580.

[2] See Bozman, II., p. 44, (note); also, Archives, 1650, p. 260; Kilty, p. 68.

[3] Spelman: English Works, Vol. II., p. 51.

[4] "Although the office of constable is now by us, and might be

law of 1824 reads: "Whereas the boundaries of hundreds throughout this State, by vacating old roads, opening new ones, and other causes, are in a great measure obliterated and forgotten," it was enacted that the election district instead of the hundred should be the limit of the jurisdiction of the constable in serving and executing civil process.[1] From this time the hundreds of Maryland existed only in tradition and in unpublished records.

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then in England, considered to be an office below the dignity of a gentleman; yet, in the then situation of the province, (1638), it might with propriety be estimated as an office of honour." Bozman, II., p. 45, (note).

[1] Laws of Maryland, 1824, ch. 140.

III.

THE COUNTY.

When the colonists arrived at the mouth of the Potomac river, March, 1634, their first work was to lay out "the plan of a city, naming it after St. Mary." They next bought of the Indians thirty miles of land, and named the district Augusta Carolana. The form of government provided for this little tract of land in the wilds of America, girded by Indians and unfriendly Virginians, is uncertain; but it is probable that the governor of the band, being well acquainted with the contents of the charter of Maryland, and knowing that his brother, Lord Baltimore, was allowed in his province all the privileges of the bishop palatine of England, at once erected the settlement, subsequently termed St. Mary's, into a county palatine. The official titles borne by Governor Calvert and his administrative officers, bear a resemblance to the terms employed to designate similar officers of Chester, Durham and other counties palatine, of England. It is not until 1638, however, that we find the term "county" employed in the records.

On the eastern side of the Chesapeake lay a tract of land, which, like its namesake in England, was first to welcome the new race of Teutonic adventurers. Kent county,[1]

[1] Lambard, in his "Perambulation of Kent," London, 1576, gives an interesting and quaint account of the settlement, customs, and legends of Kent shire, England. It is unfortunate that no history of Kent county, Maryland, has ever been compiled. One of its

Maryland, had been settled and named by Virginians, while the founder of Maryland was still struggling with the cold and famine of Avalon; and as a part of Virginia it had sent burgesses to its early assemblies. But the peculiar privileges enjoyed by the people of Old Kent, Maryland, were soon withdrawn upon the arrival of Calvert's colonists, in 1634, and the seat of the white man's power in the province was transferred to the settlement on the western side of the Chesapeake. As St. Mary's hundred was the first organized political subdivision in Maryland, so St. Mary's county became the first district of the province to receive the name and exercise the powers of the English shire.

By the provisions of the charter Maryland was constituted a province.[1] This term is frequently employed by the law-makers of Maryland as if this region alone had a right to the title; the other American settlements are constantly called colonies, but never provinces.[2] It is not improbable that Baltimore and his chief officers had in mind as their conception of a province those large and recent settlements in Ireland, known as the province of Ulster, etc. At any rate, the term first employed by the Assembly to designate the civil divisions of Maryland was not county, but barony, a term much used in Ireland. It is uncertain from the few data accessible what was actually conveyed in this term in Maryland, though it is very probable, the freemen contemplated, as we have seen, a hundred, rather than a county form of local government.

The first mention made of *county* was in January, 1638 (N. S.), in commissions issued by the governor.[3] The name

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first high sheriffs, Francis Lumbard, was, perhaps, a relative of the famous author of the "Perambulation of Kent." Of the 23 counties of Maryland, but two, Baltimore and Cecil, names suggestive of the first proprietary, have had their histories published.

[1] Charter of Maryland, VI.

[2] Archives, 1650, p. 287.

[3] Bozman, II., p. 46 and note; and Archives, 1637/8, p. 2.

first applied to the settlement, Augusta Carolana, did not become the legal term for the inhabited part.[1] The freemen seemed to have been in doubt whether to regard the whole province as a county of Great Britain, or to regard the country as a distinct principality. The palatinates of England were all *counties palatine*, but in Ireland the term palatinate has been applied to a county, province and kingdom.[2]

As the population began to increase and to diffuse itself through Maryland, the term St. Mary's, at first applied to the Indian town of Yoacomaco which the settlers purchased, soon was employed to include outlying fields and commons, probably within the palisades; and in a few years it was given to the first hundred organized,[3] and subsequently, as in St. Mary's county, to the collection of four or five hundreds erected within the first few years. During the first decade, at least, St. Mary's county embraced all the inhabited part of the province, including the "isle of Kent,"[4] located about ninety miles distant from St. Mary's town, and nearly sixty distant from the present St. Mary's county.

Kent Island, around which cluster many notable events in the early history of Maryland, was named by Claiborne, known to the inhabitants of Maryland as "Claiborne the rebel."[5] It became a very important settlement and threatened to overshadow the more deeply rooted settlement at St. Mary's.[6] Its growing importance as a trading post, drawing many settlers to its shores, caused the governor to grant to its inhabitants many civil privileges. Although at first

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[1] On a map of Maryland published in 1635, the term Augusta Carolana is employed to designate the county now known as St. Mary's. It is not employed on any subsequent map. See Hawke's reprint of "Relation of Maryland" (Md. Hist. Society).

[2] Gilbert Stuart's Sullivan's Lectures, pp. 199-203.

[3] Archives, 1650, p. 260.

[4] Archives, 1638-9, p. 55.

[5] Bozman, II., p. 584.

[6] The election returns for 1639 indicate that 54 freemen voted in St. Mary's county and 48 freemen voted upon the Isle of Kent.

known as Kent Hundred, its commander received powers almost as enlarged as those given to the sheriff of St. Mary's, and its court, nominally a hundred court, had as large a jurisdiction as the county court of St. Mary's. It was not recognized as a county, however, until the year 1642.[1] Like its rival on the Western Shore, Kent county also enlarged its boundaries so as to include the new settlements on the Eastern Shore. The boundary line was soon extended beyond the island itself, and advancing toward the mainland, it was gradually pushed more and more into the Indian territory girding the white settlements. Ingle's rebellion in 1644-6 seems to have checked the growth of Kent county; and the settlements of the Puritans on the Severn river proved an effectual barrier to the extension of St. Mary's boundary towards the north.

The growth in population and influence[2] of the Puritans at Providence, now Annapolis, made them conscious of their need of more local power, and in the same year in which the Puritans reached their zenith in the politics of England, 1649-50, their brethren in Maryland were organized into a distinct county, making the third county recognized in the province. The Puritans called their county Providence,

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[1] Balto. *Sun*, May 30, 1882. Bozman, II., p. 246.

[2] The proceedings of the Assembly for the years 1649 and 1650 indicate very clearly to what a height the Puritans of the Severn River had arisen. It was during the session of 1649, that the Assembly sent a letter to the Proprietary, in which they asserted their privileges in humble yet positive terms; and during this session also the well-known "Act of Toleration" was adopted. The Puritans, in 1649, had been regarded as residents of St. Mary's county, but in 1650 the settlement at Providence was recognized by Governor Stone as a distinct civil division, and he granted them the right to send two delegates to the Assembly. It is noteworthy that one of these members from Providence was elected Speaker of the Assembly of 1650. During this session a number of bills reflecting the doctrines and usages of the Puritans were passed by the Assembly.

The Puritan Commonwealth at Annapolis is the subject of a special research now in progress and in the hands of Daniel R. Randall, of Annapolis and of the Johns Hopkins University.

and so it was known for some years, but this term gradually gave way to the present name, Ann Arundel, though not without a protest from the Puritans themselves.[1]

The first three counties of Maryland, St. Mary's, Isle of Kent,[2] and Ann Arundel or Providence, represent certain important phases in the historic growth of the province. They became the centers of different influences, and much of the subsequent dissensions in the Assembly can be traced to delegates from some one of these counties. St. Mary's became the Catholic stronghold, Ann Arundel became the seat of the Protestant influence,[3] while Kent Island, though professing full obedience to the proprietary rule, after the overthrow of Ingle, continued for years to be an isolated, semi-independent settlement, and became the seat of several subsequent revolts. An early record mentions "Kent County, West Indies."[4]

The Act of Assembly of 1650, erecting, bounding and naming Ann Arundel county, was a strong assertion of privilege on the part of the burgesses. The erection of civil divisions in the province was a right belonging exclusively to the proprietary or to his chief executive, the governor and council. The counties were generally laid out and bounded by orders in council, but, as in the case of Ann

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[1] Archives, 1650, p. 260; 1654, pp. 341, 345; 1658, p. 369.

[2] Kent Island was erected into a county, and known as the Isle of Kent County, or Kent County. In after years, however, the term Kent County was restricted to a part of the mainland, the present Kent County; Kent Island became in 1695 a part of the present Talbot County, and in 1707 was joined to Queen Anne County. McMahon, p. 83; Bacon, 1705, ch. 3.

[3] The State capital was subsequently removed from St. Mary's town, St. Mary's county, and located at the Puritan settlements on the Severn river, now known as the city of Annapolis.

[4] See communication in Balto. *Sun*, May 27, 1882. In 1652 the inhabitants of Kent Island, probably instigated by Cromwell's commissioners, refused to regard themselves as part of the Province, and by the term Maryland they designated the settlement only at St. Mary's. Hanson: Old Kent, p. 22.

Arundel county, this power was at times asserted by the Assembly.[1] Kent county was erected by an order in council, but the time is not known. The term "Kent County" is found in the records as far back as the year 1642. It first occurs in the Acts of Assembly in 1648.[2]

A very characteristic and yet a very petty act of Cromwell's commissioners in Maryland during their regime from 1654-1658, was the tampering with county names and county boundaries. Several additional counties had been erected by orders in council, so that in 1654 the number had increased to four or five, viz., St. Mary's, Kent, Ann Arundel, Charles, and probably Calvert or Calverton.[3] The commissioners gave the name of Providence to Ann Arundel; St. Mary's county lost its religious name and became known as *Maries* county; Charles was a name too suggestive of royalty and the county was called Patuxent or Putuxent. Kent county alone retained its old name.[4] The name "Maries" was found too popish for the Puritans and it was banished to make way for the name Potomac. The counties in 1654 were called by the Assembly respectively, "Providence," "Kent," "Putuxent," and "Potomack."[5] The old names, however, were resumed upon the surrender of the government to the proprietary in 1658, except Charles county, which continued to be known as Calvert or Calverton county.[6]

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[1] In the records of the Assembly of 1650, Ann Arundel county is mentioned some time before the Act of Assembly was passed so naming it. It is not improbable that the Act of Assembly simply repeated and emphasized an order in council. The retention of the name "Ann Arundel" was probably due to the influence of Gov. Stone. Archives, 1650, pp. 273, 280-283, 291, 292.

[2] See Archives, 1648, p. 230; also transcripts of old records in communications to Balto. *Sun* of Aug. 23, 1881, and May 27 and 31, 1882. Liber C. B., p. 92, (Md. Hist. Society).

[3] Archives, 1650/1, pp. 312, 313, and 1658, p. 369.

[4] Archives, 1654, pp. 341, 345, 347, 354, 363. McMahon, pp. 80, 81, 84.

[5] Archives, 1654, pp. 355-356.

[6] Archives, 1658, p. 369.

After the proprietary had secured a firm hold on the civil administration of the province, upon the accession of Charles II. to the English throne in 1660, the counties of Maryland were gradually erected by orders in council, according to the needs of the people. To accommodate the outlying settlements new judicial districts were from time to time laid out, additional court houses and prisons erected and judicial officers appointed. Each of these administrative centers became the nucleus of a new county, the court house site becoming the county town.

In 1660, the number of counties had increased to six in number, and in 1669, to nine counties, viz., St. Mary's, Charles, Calvert, Ann Arundel, Kent, Talbot, Baltimore, Somerset, Dorchester or Dorset.[1] The boundaries of few counties had been distinctly defined. The bounds farthest away from the bay shore were very indefinitely laid out. So much confusion subsequently ensued over the county boundary lines that a number of Acts of Assembly were passed, defining in exact and unmistakable terms the limits of each county.[2]

Towards the end of the proprietary government new counties were generally erected by statute. Many were so extensive in area that it was found necessary soon to subdivide them into two, three and sometimes more subdivisions. Baltimore county, at one time, embraced all of the province lying around the head of the bay, from the Patapsco river on the west, to Chester river on the east, and included the present counties of Carroll, Harford, Cecil, Baltimore and probably Kent.[3]

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[1] Archives, 1669, pp. 155, 156.

[2] See Bacon's Laws, 1695, ch. 13; 1698, ch. 13; 1704, ch. 92; 1706, ch. 3; 1748, ch. 14.

[3] See Johnson: History of Cecil County, pp. 81, 82; Scharf: Balto. City and County, p. 42; and Balto. *Sun*, April 6, 1878, Aug. 23, 1881, May 31, 1882. An Act of Assembly, of 1671, alludes to Chester river as bounding one side of Baltimore county. Archives, 1671, p. 318.

The names given to the counties of Maryland and their position upon the map of the State indicate very clearly the broad lines in its history. Claiborne recalled his associations with the old English shire and named his settlement *Kent* Island. *St. Mary's* was appropriately named by a band of settlers sent out by a Catholic nobleman. The succeeding half-dozen counties were named after members of the proprietary's family, beginning with the wife of Cecilius, Ann Arundel, and continuing on to Henry Harford, the last proprietary of the province. A few counties in the meantime were named after the royal family of England. After the Revolutionary War, county names were selected from great military leaders and statesmen, or from the great Indian nations who had once occupied the territory. The most recently organized county of the State was named after a well-known private citizen. It is curious to note that nearly all the counties of Maryland are peninsulas, separated from each other by the large rivers that divide both sides of the bay into parallel sections.[1]

The first use to which the county of Maryland was put was the administration of justice. The county was distinctly a judicial district. Subsequently, however, it was found adapted to other uses, and it successively became the election district, tax levy district, school district, &c., according to the will of the Assembly. McMahon calls the Maryland government a "confederacy of counties."[2] But the term is not historically nor constitutionally accurate. The county of the province, as well as the incorporated county of the State were and always have been dependent upon statutory law. In Maryland all government centered in the

[1] The four rivers, Gunpowder, Patapsco, Patuxent and Potomac, emptying into the bay on the west side, border one or more sides of each of the fourteen counties on the Western Shore. Each of the nine Eastern Shore counties, except Worcester, which borders on the Atlantic, has at least two sides washed by some large tributaries of the Chesapeake.

[2] McMahon, p. 464.

General Assembly and the Lord Proprietary. Local self-government did not exist, save where specially granted by a higher power, *e. g.*, upon manors and subsequently in certain towns. The counties were specially created for a definite purpose. They were convenient in administration, but their existence was not absolutely necessary. The province might have been divided into judicial districts and the counties not called into being.

The counties of the province at an early period became the sole election districts or boroughs, with the exception of one town;[1] the hundreds had lost this distinctive mark, and became the polling places of the counties.

The number of delegates to the Assembly allowed to each county varied. In the early Assemblies every freeman must come in person or by proxy, or be amerced.[2] Afterwards, the law was altered so that each hundred of St. Mary's and each remaining county was allowed from one to three delegates, specified in the writ to the commander or sheriff.[3] Every qualified voter was obliged to vote for some candidate, or be fined.[4] In 1660, the sheriff of each of the existing six counties was directed "to cause fower discreete Burgesses to be elected to serve in the Assembly."[5] To the Assembly of 1661, the sheriff of each county was allowed to summon as many as he deemed advisable; no one county, however, sent more than four delegates. Baltimore county sent none. But in the sheriff's writs of 1662, and for a number of years subsequent, each county was allowed to send from one to four delegates to the Assembly.[6] It was customary for each county to send the maximum number.

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[1] St. Mary's city sent two delegates, its recorder and one alderman, to the Assembly of 1674, but only by special favor of the proprietary. Archives, 1674, p. 345; 1676, p. 474.

[2] Archives, 1637/8, pp. 1-5.

[3] Archives, 1641/2, pp. 114, 115; also 1650, pp. 259, 260.

[4] Archives, 1659/60, p. 381.

[5] Archives, 1661, p. 395.

[6] Archives, 1662, p. 425.

The governor issued writs to the delegates elected, summoning them to appear at the Assembly, and unless they received this writ from the governor they were not entitled to sit among the delegates. The Lower House complained in 1671 that all the delegates elected had not been summoned by writ. The governor made answer that at their own request only two delegates were charged to Kent, Dorchester and Somerset counties.[1] The other six counties were represented by three and four delegates each.

It seems to have been the practice for the Lower House not to begin its regular business until each county was represented by one or more delegates. In February, 1675, when the Lower House roll was called, it was found that no returns were made from Cecil county. A message was at once sent to the Upper House, stating that "since it cannot be a General Assembly and the name of one county totally omitted in the journal of this house," the Lower House would ask his Excellency the Governor "whether this house shall waive the said county in their orders for settling this house." Answer was returned that it was the governor's desire that the Lower House proceed at once to business. The Lower House, however, adjourned until delegates from all counties had arrived.[2]

At the first Assembly held after the death of Cecilius, first proprietary of Maryland, an important concession was made to the Lower House by his successor, Charles, Lord Baltimore, concerning county representation. The Lower House in their petition said, "We your Lops humble servants well knowing that it is your Lops prerogative to call what number of delegates or deputies to a genll Assembly out of the Respective counties as your Lordp shall think fitt to summons by your writt" they would request that each county be allowed the same number of delegates and that all delegates

[1] Supra, 1671, pp. 240-241.
[2] Archives, 1674/5, pp. 422-3.

elected receive summons by his lordship's writ. The petition was granted on condition that each member of the Lower House take the oath of fidelity to the proprietary.[1] At this same Assembly bills were introduced that delegates' expenses be paid by public assessment and not as hitherto by county assessment; but the houses could not agree. The Upper House favored a *per diem* pay, and the Lower House wanted to include mileage. The majority of the Upper House resided near the capital city, St. Mary's.[2]

Each county continued to send four delegates to the General Assembly down to the end of the proprietary government. The law of 1716 confirmed previous laws and added a number of clauses regulating the qualifications and choice of delegates.[3]

The internal affairs of the county were administered during the provincial period by a sheriff or marshal, commissioners, magistrates or justices, clerks, inspectors, coroner, and subsequently road overseers. These officers did not include the officers of the hundred, parish or town. The government of the manor and of the corporate city were entirely separate from that of the county.

The pivotal factor of the county administration was the county court. And it must be understood that a *court* in Maryland always meant a judicial body, never legislative, and only incidentally executive. The county court was not a folk-moot, it was not even a representative body. From the very beginning of the settlement, the county court was

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[1] Archives, 1676, pp. 507-8. The proprietary being in the province had acted as governor and had issued writs to but two of the four delegates elected in each county. Those summoned were doubtless considered most loyal to his lordship's interests. It is to their credit that the favor shown them did not prevent them from remembering their duty to their county constituents.

[2] The Upper House, at this time, consisted of six members, four of whom, the governor, the chancellor, the secretary and the surveyor general, were members of the Calvert family.

[3] Bacon's Laws, 1716, ch. 11.

composed of commissioners nominated and chosen by the governor. In no county was there a legislative body, except in the corporate towns located therein; and only two chartered cities flourished during the proprietary government, and these were the successive places of Assembly meetings, viz: St. Mary's and Annapolis.

The most important officer connected with the county court was the sheriff. In early times he seems to have been called marshal.[1] He was originally appointed by the governor,[2] but his duties afterwards became so important, and his administration of such concern to the freemen, that in 1662 the county commissioners received the privilege of naming three persons from whom the governor selected one as the sheriff of the county.[3] This plan did not continue, as it led to a stronger assertion of privilege on the part of the freemen than the governor or proprietary was willing to admit. In 1669, the Upper House of Assembly, voicing the judgment of the governor, sent a message to the Lower House, in which they said, "the appointing sheriffs is part of my Lord's royal jurisdiction and that therefore the two houses ought not to intermeddle in making an Act for it." The Lower House had complained against the extortion practiced by the sheriffs, and of the want of redress.[4] When Governor Charles Calvert became lord proprietary after the death of Cecilius in 1675, he

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[1] Archives, 1642, p. 163.

[2] Bozman, II., p. 573.

[3] Archives, 1662, p. 451. An Act of Assembly of 1638/9 directed that "the Chief Judge of the said Court [county] shall nominate and appoint any inhabitant of the county (not being of the councill) to be sheriff and coroner of the county;" his duties and authority should be similar to that of the "sherrif or coroner of any shire in England." See Archives, 1638/9, p. 55. But this statute never became operative, being vetoed by the proprietary.

[4] Archives, 1669, p. 197. The proceedings of the Assembly of this year are very interesting on account of the spicy messages sent from one House to the other on questions of jurisdiction. The Lower House claimed the privilege of the "Commons in the Parliament of England." The Upper House disputed this claim, and said the Lower House had no more privilege than the "Common Council of the

secured the repeal of the Act of 1662, and reserved to himself and council the entire control of the sheriffs.[1] But his assertion of prerogative was of short duration. In less than a decade and a half, the Revolution of 1688, in England, spread to Maryland, and the lord proprietary found himself, in 1691, stripped of all his palatinate regalia. The appointment of the sheriffs fell to the sovereign of England, and was retained by them until the province was returned to the proprietary in 1715. But before the proprietary had assumed the reins of government the Assembly of the year 1715, summoned by authority of King George I., had passed a number of Acts depriving the sheriffs of much of their former power.[2] These officers eventually became the mere servants of the Assembly, though appointed by the proprietary.

The sheriff's duties varied from time to time, but in the main they were similar to the duties of the sheriffs of the

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City of London." They also declared that the Lower House had "no power to meet but by virtue of my Lord's charter, so that if they in any way infringe that they destroy themselves; for if no charter there is no Assembly, no Assembly no privileges." The threats of the Upper House were not in vain. The Lower House humbly razed a part of their journal to satisfy the members of the Upper House. The whole trouble between the two Houses was brought about by a sermon preached in the Lower House by a Charles Nicholett. The loyalty of the Upper House may be understood when it is recorded that the majority of its members were blood relations of the Lord Proprietary. See Archives, 1669, pp. 159-183.

In a message to the Upper House, the Lower House use the following language: "We are sorry exceeding sorry that we are driven to say that your answer & objections to the paper entituled the publick grievances are not satisfactory or that by the refulgent lustre of the eradiations of reason that shine and dart forth from them the weak and dim eye of our understandings is dazled and struck into obscurity." They conclude the remarkable address with: "We shall be willing to have our journal contradicted, expunged, obliterated, burnt, anything," provided the burdens under which "the country groans and cryes might be removed." Supra, pp. 180-181.

[1] Bacon, 1676, ch. 2.

[2] Bacon, 1715, ch. 25; ch. 41; ch. 46, etc.

English shires. Each county of Maryland had a sheriff, though at times one sheriff would be charged to perform duties in another county. He was amenable to the governor and received his instructions from him. The earliest duties performed by him were serving writs and processes, imprisoning criminals, inflicting corporal punishment and attending executions. He was also the collector of public duties, the viewer of plantations, and, until coroners were appointed, he was also obliged to view dead bodies and "warn the enquest."[1] For many years his duties remained as above outlined, except that he was relieved of acting as coroner. By act of 1676, he received fees also for taking "bayle bond," serving attachment and impaneling juries.[2] From time to time the sheriff was employed to assist the public surveyor, especially in taking a resurvey of lands whose bounds were in dispute.[3] At times he was ordered by the council to inquire into the amount and location of real property left by a deceased person, and to make return to the chancery court of records.[4]

The duties, however, entrusted to the sheriff of Kent Island remind one most forcibly of the large powers wielded by the sheriffs of the shires of old England. Not only did he serve writs, collect taxes, and imprison criminals, but he was also made commander-in-chief of the militia of the county.[5] This, however, was but a temporary expedient,

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[1] See Archives, 1642, pp. 161, 163. The sheriff was instructed to choose one of his servants to act as public executioner and hangman. Bozman, II., p. 139 and note.

[2] Archives, 1676, p. 536.

[3] Kilty, p. 144.

[4] Kilty, p. 181.

[5] Bozman, II., p. 660.

The sheriff of Kent combined the offices of the *ealdorman* and of the *gerefa* of the old shires of England, the latter officer, as the king's steward and royal administrator, having charge of the fiscal affairs of the shire, while the ealdorman, the national officer, was the commander of the freemen and vassals. Stubbs: Const. Hist., I., ch. 5, pars. 49 and 50.

owing to the insubordination of Robert Vaughan, the commander of Kent; it is not improbable that when this officer was reinstated to his command, the extraordinary power conferred upon the sheriff was revoked, but the fact is not stated in the proclamation for reinstating Vaughan.[1]

The lord proprietary very early recognized the importance of having a house of Assembly, to assist him in legislation, composed of the representative men of the province. To secure quiet and lawful elections in the counties and the return of well-qualified delegates, he invoked the aid of the sheriffs. These officers were made judges of the hundred and county elections, and were held to strict account for breach of duty. A case is mentioned of a county which chose two delegates to the Assembly, but after the electors had met at an ale-house, they informed the sheriff that they wanted but one delegate returned. He, willing to accommodate them, made return to the chancellor of the election of but one delegate, and peremptorily told the other delegate-elect he could stay home. But this action did not suit the Assembly, and a fine was imposed upon the sheriff for neglect of duty.[2]

The writs for the election of delegates to the Assembly were at first directed to the secretary, to constables of hundreds and to other public men, including sheriffs, and the election ordered to take place before them, but in 1650 the sheriffs of St. Mary's and of Kent were directed to supervise the election in these counties, and the governor himself took charge of the election at Providence.[3]

The Restoration of 1715, by which Baltimore was reinstated as lord proprietary of Maryland, secured him once more the appointment of the sheriffs. But the two decades of interregnum in Maryland had given the people a knowledge of their power, and during the Assemblies of the next

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[1] Supra, p. 661.
[2] Archives, 1669, pp. 187-8.
[3] Archives, 1650, p. 260.

quarter of a century there were laws constantly made restricting the authority of the sheriff and bringing him more and more under the Assembly's control. His term of office was limited to three years and his bond placed at 200,000 lbs. of tobacco.[1] The extortion practiced by the sheriffs is severely denounced and they are alluded to as officers who "have most cunningly and craftily evaded the laws."[2] The sheriff was ordered to proclaim at the county courts recent Acts of Assembly,[3] to supervise the returns of taxables made by constables, and transmit them to the secretary's office,[4] to collect parish and county rates,[5] to read the riot act at each county court, for the benefit of the negroes;[6] to post on the doors of churches, inns, and mills, county and Assembly notices,[7] to certify the death of a condemned slave so that his owner might receive his indemnity; and in general to perform other duties incumbent upon the sheriffs of England, or specially imposed by the Assembly of Maryland, the proprietary, or by the justices of the county court.

The assemblage of magistrates known in Maryland as the County Court, had become a very different body, both in composititon and authority, from its remote ancestor, the *scirgemot*, the shire moot of England. It had never been a *folcgemot*, an assembly of the people, and never witnessed the presence of the bishop, the lord or the assessors. The sheriff had become its servant, instead of its presiding officer, and its functions were limited to judicial questions alone.

The County Court is first mentioned in the records in the council proceedings of the year 1638, February 12, though

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[1] Bacon, 1715, ch. 46. This statute was entitled "An Act for the direction of sheriffs in their offices, and restraining their ill practices within this Province."

[2] Supra, 1715, ch. 46, par. 13.

[3] Supra, 1715, ch. 25.

[4] Supra, 1719, ch. 12.

[5] Supra, 1729, ch. 7.

[6] Bacon, 1723, ch. 15; 1748, ch. 19; 1751, ch. 14.

[7] Supra, 1716, ch. 11.

it is probable that judicial bodies known by the name had previously been convened. The county court, as first assembled, consisted of the governor and two officials appointed by him, sitting as judges, and of a grand jury regularly impaneled and sworn; but the number composing the jury is not stated. The court was convened to try several planters for piracy and murder, but since the governor was not authorized to pass judgment upon any prisoner which affected his life, the trial was deferred to the meeting of the General Assembly then in session at St. Mary's.[1] The necessity of a county court was recognized by the freemen present and before the close of the term, an act was passed entitled "An Act for punishment of certaine crimes in the County Court."[2] This statute did not propose the erection of this court, for such action was a part of the prerogative of the governor and council, but it simply declared the jurisdiction of the court after it was constituted. The governor and all the members of the house signed the bill,[3] but unfortunately no copy of it has been preserved. In the ensuing year, 1639, an act was passed by the Assembly "for the erecting of a county court." This statute did not long remain operative, as all acts of this Assembly were vetoed by the proprietary, yet the Act, which has been preserved entire in the records, is an interesting example of early legislation upon judicial matters. At this time there was but one county in the province, and judging from the great range of powers given the judges of the county court, the freemen had not yet begun to realize that the province of Maryland was something more than a mere county of the English empire. The Act directed that the court should be held on the first Monday of each month from October to March before the chief justice or commissioner, or commissioners, appointed by the proprietary or governor. Its jurisdiction

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[1] Bozman, II., pp. 60, 575.
[2] Archives, 1637/8, p. 22.
[3] Supra, p. 23.

should be as ample "as any of the King's Courts of Common Law in England." It was in fact the supreme court of the province, in civil cases, but appeals could be taken to the lord proprietary, sitting in court palatine. The defendant could have his case tried before the court, without jury, or if he "chuse to be tried by his country," before a jury of seven or more freeholders. The judges of this court impaneled the grand jury of the province, and also appointed the sheriff of the county. The county court was made a court of record.[1]

The county court act was vetoed by Baltimore, and for several years the term does not occur. In the meantime, however, a court, inferior in jurisdiction to the one contemplated by the Assembly, and differently organized, was instituted by the proprietary. Very little is known of these county courts, as they are only referred to incidentally by Acts of Assembly, but it is quite certain that their jurisdiction was very limited, and that probably they were the only courts held in the counties. An attempt was made by the Assembly of 1638/9 to establish justices of the peace in each county, but the measure proved abortive, owing to the proprietary's veto. From several acts passed by the Assembly of 1642, we ascertain that the county court was presided over by a number of commissioners, that it was held four times a year in each county, that notice of its meeting must be published at least ten days in advance, and that it was probably a court of record; it was inferior to the court known as the provincial court. Each county court had its clerk.[2] By act passed in 1648, the courts were held six months of each year, and during the first six successive days of the month.[3]

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[1] Archives, 1638/9, p. 47, 55.

[2] Archives, 1642, pp. 148, 149, 157, 162.

[3] Archives, 1647/8, p. 232.

We get glimpses of the jurisdiction of these early courts from the fragmentary records which have been preserved. The first entry in the court records of Kent Island begins: "At a court holden for this Island, at Mr. Philip Conier his house, on ye 3rd of January,

When the Commissioners usurped the government of Maryland, they disturbed at once the administration of law and justice. It had been usual for the proprietary assemblies to enact laws for a very short period, generally three years, and likewise the proprietary had appointed officials by commission, revocable at his pleasure. The proprietary had claimed royal jurisdiction in the province,[1] but he did not press his full rights; on the other hand, the Lower House of Assembly claimed the rights of the Commons of England, but had great personal respect for the proprietary. When the commissioners of Cromwell arrived in Maryland, much of the machinery of government came to a stand-still and the courts, the creatures of the proprietary, especially felt the baleful influence of the usurpation. The inhabitants of St. Mary's county, in 1654, petitioned the Assembly, composed of sympathizers with the Commonwealth, for "a county commission to keep court." The petition was granted and a commission was appointed, "for the conservation of the peace and keeping of courts" in the county.[2] No details are given concerning the organization of the county courts so established, but they were courts of record, and were obliged to keep entries of the ages of all indentured servants, of intestate estates, and to pass judgment in testamentary causes. The extent of their civil jurisdiction is not specified.

We get another glimpse of the county courts about a decade after the commissioners' usurpation, a few years after

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1647, Present, Capt. Robert Vaughan, commander, Mr. Thomas Bradnox, Mr. Philip Conier, Mr. Ed. Commins, Mr. Francis Brooke." Suits for slander, debt, etc., were introduced. Capt. Vaughan laid a complaint against a planter for defying his authority, for uttering reviling speeches, "full of insolency, arrogancy and pride," and for inciting the people to sedition. The defendant was sentenced to make apology in open court and the case dismissed. Hanson: Old Kent, p. 16.

In 1642, a county court for Kent Island had been erected, with three commissioners. Liber C. B., p. 92 (Md. Hist. Society).

[1] Archives, 1654, p. 354.

[2] Supra, pp. 347, 353, 355.

the proprietary had been restored to his palatine rights in the province. The Acts of Assembly of the year 1662 and 1663 make reference to court houses in each county, and to the ducking stool and pillory adjoining them. The county court is represented as a court of record and was presided over by county commissioners. Their jurisdiction was civil and criminal and extended to matters matrimonial and testamentary.[1] The court days were specified by Act of Assembly.[2] It seems probable that certain commissioners were appointed, to have a limited administration of affairs in each county, and that they were instructed from time to time by the Assembly and the governor, these commissioners constituting the county court.[3]

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[1] The commissioners of the county court were authorized to take charge of orphans' estates. They were particularly instructed to secure a "*free* education" for the orphans, but if the estate be "soe meane and inconsiderable" as not to admit this expense, then the orphans "shalbe bound apprentices to some handicraft trade or other person." Archives, 1663, p. 494.

[2] Archives, 1663, pp. 496, 497, also 479, 490, 534.

[3] The proclamation issued in May, 1658, by Gov. Fendall, erecting Charles county, a manuscript copy of which has been preserved, gives some particulars about county commissioners, but as Fendall at this time was conspiring to overthrow the proprietary government, it is possible he granted the commissioners unusual powers to secure their coöperation. He directed that the six commissioners named by him should constitute the county court and should conserve the peace and quiet rule of the county. They were instructed to inquire by oath of "good and lawfull men," number not specified, into all cases of felonies, witchcraft, sorceries, trespasses, forestallings, and in general "of all and singular other misdeeds and offences of w^{ch} justices of ye Peace in England may or ought fully to enquyre," jurisdiction not to extend to cases real or personal exceeding 3,000 pounds of tobacco, and judgment not to affect life or member. Three of the commissioners were named of the *quorum* and Mr. John Hatch appointed presiding justice or judge. New commissioners were at the same time appointed for the other counties, including St. Mary's, eight; Calvert, six; Ann Arundel, eleven; and Kent, six. The oath required of the commissioners has a suspicious appearance from the absence of allegiance to the proprietary. The oath begins, "You shall doe equall right to y^{e} poore as the Rich, to y^{e} best of yo^{r} cunning witt & power and after the presidents & customes of this province & Acts of Assembly thereof made."

The county court stands out more distinctly toward the close of the reign of Cecilius, but even then a clear view of its constitution and authority is not possible. It must be borne in mind that, during the administration of the first two proprietaries of Maryland, the Assembly played a very subordinate part in the civil government of the province, and it is only during short intervals of internal troubles that any attempts were made to restrict the prerogative of the proprietary in his judicial and executive powers; during these short periods the civil administration of the counties and hundreds being brought into more intimate connexion with the Assembly, we are enabled to get clearer views of their organization and jurisdiction. During the latter part of the period of Cecilius, the Assembly seems to have assumed a larger share in the government of the subdivisions of the province and to have enacted some laws encroaching upon Baltimore's prerogative, but the accession of Charles, second proprietary, in 1675, caused the Assembly to retrace the steps they had taken and to surrender to him almost irresponsible control of the town, hundred, and county.

An important law was enacted in 1674, directing that a court house should be erected in each county. The Assembly was led to this action after "taking into their serious consideracons the great dishonour & incomodiousnesse that attends the present governn^{t} of this Province for want of

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The commissioners receive no instruction concerning the roads, poor, education, religion, police, taxes and other incidents of local government. The care of these still remained with the governor. See Liber P. C. R., pp. 52-4 (Md. Hist. Society).

It may be here mentioned that in 1661, Fendall and Hatch were found guilty of treason by the Provincial Court of Maryland, and sentenced to banishment and forfeiture of estates. How much of the county government instituted by Fendall was special and how much was according to usage, cannot be stated with certainty. It is probable that the organization was lawful, but the jurisdiction of the commissioners abnormal and magnified. See Liber P. C. R., pp. 429, 430.

Court houses & prisons in each respective County therein."[1] The county commissioners were allowed two years in which to erect said court houses, under penalty of ten thousand pounds of tobacco. The law seems to have been observed, for it was said in the next Assembly, held the following year, that only a few counties had not finished their buildings.[2] Generally the site and size of the court house were determined by the local authorities, but owing to a division of opinion among the commissioners of Baltimore county, and in view of a petition of Captain Thomas Todd,[3] a delegate from that county, the Upper House of Assembly ordered the commissioners of Baltimore county to erect their court house at "the head of Gunpowder River on the North Side."[4] By statute of the same Assembly it was enacted that, with a few exceptions specified in the statute, no ordinaries or inns should be allowed in the province except at the court houses;[5] the sites of the courts and the ordinaries became the nucleus of many prosperous towns in the province.

Very little information can be gleaned from existing records concerning the internal machinery of the courts. We know from the proceedings of the Assembly that court days were fixed for each county,[6] generally five times each year; that each county commissioner must attend the court

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[1] Archives, 1674, p. 413.

[2] Archives, 1674/5, p. 447.

[3] The lineal descendants of Captain Todd still occupy the old estate of their doughty ancestor, at North Point, Baltimore county. Through the courtesy of Mr. Thomas Todd we have had the pleasure of visiting the plantation and of inspecting the old mansion, built upon a bluff commanding a fine view of the Chesapeake bay and neighboring rivers.

[4] Archives, 1674/5, p. 430.

[5] Archives, 1674/5, pp. 432-3-4. The keeper of each ordinary must give "good security to maintaine stable room and provision for twenty horses apiece and twelve feather beds with suitable furniture before they have any license." Supra. At times a want of provisions at the ordinary led to a summary adjournment of the Assembly. See Archives, 1666, p. 34.

[6] Archives, 1669, pp. 222, 397.

and that the June session of the courts should take action upon business relating to "orphants," and that the commissioners of each county court "may and ought to doe heare judge & determine any businesse depending in said court."[1]

The county commissioners were authorized to appoint a few subordinate officers, as the keepers of weights and measures,[2] to assess and levy county taxes,[3] to be taken by equal assessment, by poll.[4] The clerk of the county court was made keeper of the county seal.[5] A law enacted in 1666 prohibited any county commissioner, sheriff or clerk from pleading as attorney in the county court in which he held office.[6] A comparison of the laws of Assembly during these years indicate that the terms county justices of the peace, county commissioners, and commissioners of the county courts were synonymous, and referred to the four or more commissioners appointed by the governor and council for the administration of county government as indicated above.[7]

During the forty years which elapsed from the accession of Charles, successor of Cecilius to the proprietaryship, and the restoration of the palatinate by King George I. to Benedict Leonard, the provincial records contain but little reference to the counties and county administration. The second proprietary held a firm grasp upon his prerogative and by coercing the members of the Lower House, and filling the Upper House with members of his family, allied to his interests, he was enabled to direct the government according to his own will and pleasure.

The Protestant revolution of the year 1688, having spread from England to Maryland, created serious internal troubles

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[1] Supra, p. 397.
[2] Archives, 1671, p. 281.
[3] Archives, 1671, p. 273, also 1674, p. 409.
[4] Archives, 1671, p. 341.
[5] Archives, 1671, p. 294.
[6] Archives, 1666, p. 132.
[7] Compare Archives, 1674, p. 409; 1671, p. 273.

in the province, and Baltimore, a Catholic, was deprived of his palatinate rights. The English sovereign became the chief executive and judicial officer of the province, but the Assembly was unable to secure any decided privileges. A few years previous to the overthrow of the proprietary government, the placid current of county administration had been somewhat disturbed by the erection of numerous towns within their borders, laid out and partly governed by town commissioners. Towards the close of the century a new stream of local government within the counties was opened by the establishment of parishes for religious purposes, and the appointment of vestrymen.[1]

In order to comprehend the county organization and government after the restoration of the Calverts to the palatinate in 1715 and down to the Revolution of 1776, it must be borne in mind the province had been subdivided into a number of civil and territorial subdivisions, including the county, parish, hundred, town and manor. It must also be remembered that there was no local government except that granted by the proprietary or Assembly, and that as the power of the proprietary diminished, it led to the growth of the authority and influence, not of the local boards, but of the General Assembly, and particularly of the Lower House of the Assembly, or, as they sometimes called themselves, the House of Commons of Maryland.[2] The General Assembly began to assert its control over the counties soon after the death of King William III.

During the early part of the reign of Queen Anne several Acts of Assembly were passed extending the authority of the county commissioners and tending to infuse a more democratic spirit into the counties and also tending to curtail the authority of the proprietary. The Assembly did not, however, legislate in an arbitrary manner, but their aim

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[1] See "Parish Institutions of Maryland." Studies, Vol. I., No. 6.

[2] Archives, 1649, p. 239.

was to establish some definite and permanent form of county government, instead of the irregular though not oppressive procedure of the proprietaries.

Nearly all the legislation relating to the counties refers either to the county courts or to the sheriffs as their executive officer. Whatever records of the counties during the last century have been preserved are mainly county court records. The incendiary of a court house was liable to suffer death.

Among the many acts passed by the Assembly during the half century succeeding the accession of Queen Anne, 1702, are laws authorizing the county commissioners to levy county taxes;[1] to assess parish rates;[2] to appoint road overseers and to direct their work;[3] to fix and regulate parish boundaries;[4] to appoint constables of hundreds annually;[5] to appoint press-masters;[6] and in general to administer justice upon actions of guardians and orphans, runaways, servants, slaves and masters, executors, and other matters relating to cases testamentary, civil, and criminal. The county court could take cognizance of equity cases, in actions not exceeding £20 sterling;[7] and could try slaves for capital offences.[8] A wise provision was made in 1752, by which owners of slaves failing to provide food and clothing for old and infirm slaves were made amenable to the county court.[9] By a law of Assembly of 1714, the jurisdiction of the county justices was enlarged and they were authorized to hold plea of debts exceeding £100 sterling or 30,000 lbs. of tobacco, in which the balance due did not exceed £20 sterling or 5,000 lbs. of

[1] Bacon, 1704, p. 34; 1748, p. 20.
[2] Ibid., 1729, p. 7.
[3] Ibid., 1704, p. 21.
[4] Ibid., 1713, p. 10.
[5] Ibid., 1715, p. 15; 1723, p. 15.
[6] Ibid., 1715, ch. 43.
[7] Ibid., 1763, p. 22.
[8] Ibid., 1751, p. 14.
[9] Ibid., 1752, ch. 1.

tobacco.[1] A subsequent law authorized single magistrates of the county to take cognizance of cases under 400 lbs. tobacco.[2] Appeals from the magistrate's court could be carried to the county court, and from the county court to the provincial or superior court. The supreme court of appellate jurisdiction was that held by the governor and council.[3]

Some "rules of court" made in accordance with an Act of 1730, have been preserved in old court books, and give us a good insight into the inner life of an old Maryland court house. The first regulation of the county court of Cecil of the year 1721 reads: "When the justices meet together at the court house to hold a court one of them shall order the crier to stand at the court-house door and make three 'O yeses,' and say all manner of persons that have any business this day at His Majesty's court draw near and give your attendance for the court is now going to sit; God save the King." Rule 7 reads: "the plantiff's attorney standing up and direct himself to the court & then to the jury if any and open his client's case, after the clark's reading the Declaration . . . . . and when done he to sitt down and then the Defendents Attorney to stand up and answer him as aforesaid & not to speak both together, in a confused manner or undecently." Rule 9 prescribed that no one presume to keep his hat on in court except "any of the Gentlemen of his Majesty's Honerable Councell." No one was allowed to smoke in the court room without permission of the court.[4] When these rules were drawn up Matthias Van Bibber was the presiding justice or judge of the court, and his nephew, James Van Bibber, the county sheriff. Many troubles arose in the court from this close affinity of the highest officers of the county.[5]

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[1] 1714, ch. 4.
[2] 1715, ch. 12.
[3] 1713, ch. 4.
[4] Johnson: History of Cecil County, pp. 244-246.
[5] Ibid., pp. 250, 251.

A very useful officer to the county was the court clerk. His duties were important and varied. His bond was £1,000 current money. He issued warrants, kept the county records, including lists of taxables, of fines, deeds, processes, etc., made entry of orphans, of apprentices, imported convicts, and performed such other duties as were required of him by the county justices.

In addition to the officers of the county already mentioned there were two others who occupied an important place, if not a prominent one, *e. g.*, the commander and the coroner. Very little is known of the commander of counties, though the commander of Kent, before it was fully recognized as a county, was an officer who was allowed a very large range of powers. In many respects he was a deputy governor for this Island. He presided at the court, was commander-in-chief of the militia, exercised all the powers of a justice of the peace of England, and was assisted by a council of three gentlemen.[1] There were also commanders of counties appointed by the governor, but their duties cannot be clearly defined. Their names frequently occur in the old records, even after a county had been erected and fully organized. They were probably executive officers, appointed for a stated time and for a definite purpose. In 1644, Secretary Lewger was appointed by Governor Calvert commander of St. Mary's county, during the governor's absence from the county, with power to prorogue the Assembly.[2]

The office of commander of county gradually disappeared from the county government at the time the office of another official, the coroner, began to assume importance. During the early period of the colony, the sheriff performed the

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[1] Bozman, II., p. 614.

[2] Archives, 1644, p. 202.

Kilty says, p. 75, the commanders of counties were "the chief officers both in military and civil affairs, not excepting judicial proceedings." But he is in error, for we have seen that the chief judicial officer of the county was the presiding justice of the county court.

duties of the coroner, and was called "sheriff and coroner."[1] It was not until the year 1666 that efforts were made in the Assembly to appoint a coroner for each county,[2] and towards the close of the session, a bill was enacted authorizing the governor to appoint "corroners in each respective county," and to issue commissions to them in keeping with the duties of similar officers of England.[3] The statute of 1671, recognizing that the office of coroner was "a place of great trouble and charge to the officer in the execucon thereof," directed that additional salary should be given to him. This statute specifies the coroner's duties. He had to act as deputy sheriff, when the sheriff was personally interested in a court action, to hold inquest of dead bodies, &c.[4]

The county officers were put upon a higher plane than the ordinary freemen, in the respect shown them, and indecent behaviour in their presence, such as cursing or swearing, and drunkenness,[5] was severely punished.[6] Freeholders and other reputable persons, thus insulting magistrates, were liable to a fine; landless men were liable to be put in the stocks or receive thirty-nine lashes from the constable. The reviling of magistrates was severely punished, and practitioners of the law, offering any insult, affront or "indecent demeanour" to any magistrate, were liable to be set in the stocks, fined or sent to prison.

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[1] Archives, 1638/9, p. 55.

[2] Ibid., 1663, pp. 17, 23.

[3] Ibid., 1666, pp. 130-1.

[4] Ibid., 1671, p. 293; 1676, p. 536.

[5] Drunkenness was early defined to be "drinking with excess to the notable perturbation of any organ of sence or motion," but it is probable that this definition was not rigidly enforced, in view of the generous variety of liquors found at the inns erected at the county courts. See Archives, 1638/9, p. 53. Among the necessary "comodities and accomodacons" found at the ordinaries were brandy, "canary," "malago," French wines, Rhenish wines, "Portugall wynes, sherry, strong beer and ale," "fforeigne beare," "syder," "perry," quince, "mumm," and muscovado sugar. Archives, 1676, p. 296.

[6] Bacon, 1719, ch. 16.

The upheaval of English civil society, brought on by the Revolution, had a decided influence upon the course of county history in Maryland. The rapid changes tended to undermine every institution of the province, and some were so violently shaken as to be forever ruined, and were finally abandoned, *e. g.* the parish, hundred, and manor. One result of the overthrow of the proprietary government was to strengthen the Assembly and to solidify the county organization, but the jurisdiction of the Assembly extended itself into matters formerly belonging to the county officers, and to-day local laws are enacted by the General Assembly which, during the provincial history, belonged to the county or to its subdivisions.

The county of to-day is a better developed and more thriving institution than during the regime of the Calverts, but it is far removed from the goal of its usefulness. An important step in the internal growth of the counties was their legal incorporation into municipal corporations. The erection and incorporation of towns, the growth of the judiciary, the abolition of the governor's council, and other constitutional changes have materially altered the form of county government and the duties of their commissioners. These local officials are no longer justices of the peace, or as formerly called, commissioners of the county court, but they are known in law simply as county commissioners. They have dropped all their former judicial functions and are but the administrative body of the county. They are elected by the people of the respective counties. They have full power, in many counties, to appoint judges of election, road supervisors, collectors of taxes, trustees of the poor, county clerk, and all other officers, required for county purposes, not otherwise chosen. All property of the county, including roads, bridges, buildings, etc., is under their charge and subject to their control. They have power to locate all election polls "in the different election districts or town-

ships of their respective counties."[1] The levying and collection of taxes is committed to them, also the opening, altering, and closing of public roads. The commissioners of some counties, *e. g.* Calvert, Prince George, etc., are authorized to subdivide the election districts into road districts, and to appoint supervisors for them. Male inhabitants of counties, not otherwise excused, are obliged, upon summons of road supervisors, to work at least two days of each year on public highways, or pay a commutation. The supervisors are required to make quarterly reports to the commissioners. Special commissioners may be appointed by the county commissioners to lay out private roads and to assess damages. In some counties, road supervisors are elected biennially by the inhabitants, but are commissioned by the county commissioners and subject to their authority. Other minor duties are laid upon the board of county commissioners, either by constitutional or by statutory law. Appeals may be taken from them to the circuit court of the county.[2]

The superior judicial body of the county is the circuit court. The whole state is divided into eight judicial circuits, extending in area from a single city, Baltimore (8th circuit), to five adjoining counties, Caroline, Talbot, Queen Anne's, Kent and Cecil, (2nd circuit). Each circuit court is composed of three judges, elected for a term of fifteen years by the inhabitants of the counties comprised in the circuit. At least two terms of the circuit court must be held annually in each county of the circuit, and when in session it is called the county court of that county. Each county elects its own clerk. The circuit courts for the several counties are the highest common-law courts of record and original jurisdiction in the state, and each has full common-law powers and jurisdiction in all civil and criminal cases within its county, unless otherwise provided for by the constitution or by Acts of Assembly.

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[1] Md. Code, 1878, art. 22.

[2] Constitution of Maryland, 1867.

The petty judicial matters of the county are entrusted to the justices of the peace, varying in number in different counties, and appointed by the governor. They have jurisdiction where the amount involved does not exceed one hundred dollars, in all cases of enforcement of contracts, redress of wrongs, suits in bonds, actions of replevin, and cases of attachment.

In each county there is a sheriff elected biennially, a coroner, state's attorney, &c. The constables of election districts are agents of the county justices and are appointed by them.

New counties may be formed from an existing county, or from sections of adjoining counties, upon the desire of the inhabitants of the proposed new division, but no new county shall contain an area less than 400 square miles, or less than 10,000 inhabitants. Each county may send one senator to the General Assembly, and a body of delegates, varying in number from two to five, according to size and population.

According to the opinion of the highest legal authority of the state, the counties are "public territorial divisions of the state, established for public political purposes, connected with the administration of the government." They are the creatures of the legislature and are in all matters subject to the control of this body, except where restrained by the state constitution. The General Assembly, as trustee of the public, can, by mandatory acts, control and direct the legislation of county commissioners, when such interference is required for the public good.[1]

There seems to be a general feeling throughout the state, judging from the local press, that an organic change in county government is needed in order that the inhabitants of counties may secure a more economic and prompt administration of local affairs. It is urged that the prosperity of the state requires a wider diffusion of local government not only as a means of economy, but also as a means of pro-

[1] Maryland Reports: 12 Gill & Johnson, Brantly's Edition, pp. 279-299.

moting a more rapid interchange of ideas and of introducing to the outside world the internal resources of the state, and also as a means of fostering the social, political and industrial interests of the people. How to effect the change best suited to the habits and genius of the people is a question which must be decided by the people themselves in general conference. An attempt was made twenty years ago to subdivide the counties into small municipal corporations, known as wards or townships, similar to the townships of our most prosperous Western States, and in accordance with the views constantly reiterated by Jefferson;[1] but though the measure was incorporated in the Constitution of 1864[2] with but one dissenting voice, it was omitted in the Constitution of 1867. The Illinois county system,[3] whereby the subdivision of counties into townships is left to the option of each individual county, has been received with favor in other states. Not only the want of legislative authority, and of coercive power, but the overlapping of the jurisdiction of the county and of corporate towns has also been a source of annoyance to county commissioners.[4] The election district has been extensively used for census-taking, conventions, local option, petty judicial mat-

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[1] Jefferson: Works, VI., p. 544.

[2] In the constitutional convention of 1864, a committee of seven members was appointed on county divisions and subdivisions. Five of the committee, including the members from Alleghany, Carroll, Caroline, and Howard counties, brought in a report, which was incorporated in the Constitution. The delegate from Prince George's county, who disapproved of the report, based his objection not upon the inefficiency of the township system, but on the grounds that the time had not arrived for its general adoption in all the counties of Maryland. The report as adopted made it compulsory for the Assembly to subdivide all counties of the State into small municipal corporations for the management of public local concerns. The changes proposed being too radical for the times, the township article was dropped out of the Constitution of 1867. See Const. of 1864, Art. 10; also, Debates of Const. Convention of 1864, pp. 37, 65, 1080, 1192.

[3] Studies, Vol. I., No. 3.

[4] Mandamus of Town against County, Baltimore *Sun*, Jan. 29, 1885.

ters, and in some cases upon matters relating to roads, schools, taxes, poor, etc.[1] A correspondent of a well-known local newspaper, recognizing the inconveniences often experienced by county officers in waiting for the biennial sessions of the General Assembly, says in substance: "It would be a good policy to give the county commissioners of the several counties the power to make petty local laws and thus relieve the legislature of much of its present unimportant work. . . . Matters of purely local interest could well come under the supervision of the county commissioners, who would be apter to arrive at more correct conclusions concerning them than the legislature, in which it is possible for delegates from Alleghany county to decide whether a small wharf or pier shall be built in Cambridge or not. If the county commissioners had control of these affairs they would be conducted in accordance with county opinion, with no outside influences to interfere with or hinder their enactment and enforcement."[2]

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[1] Baltimore *Sun* and *American* Almanacs, 1885, give lists of election districts.

[2] Baltimore *Sun*, Feb. 18, 1884.

In a summary of the Acts of Assembly of the session of 1884 published in its columns, the Baltimore *Sun* (Mar. 29, 1884) says, that in the three hundred laws enacted at this session are included "a number of general laws, a large amount of corporation legislation, though the bulk is local and private legislation." Among Acts of the Assembly relating to counties are many authorizing the county commissioners to lay out county roads, to build bridges over small creeks, to protect game, and to encourage the killing of hawks and crows; to regulate catching of fish; to prevent the running at large of stock; to allow local option; to contract for water supply for towns; to protect agriculture and fruit-growing; to prevent carrying of concealed weapons, to punish trespassing, to establish cemeteries, to make repairs of public buildings, and many others intended to protect property and to make internal local improvements. By the enactment of a general county law by the Assembly many of these regulations could be safely entrusted to the control of the county commissioners with more satisfactory results.

IV.

THE TOWN.

No student of society can have watched the operations of the vital processes of the social organism and failed to notice the complex growth of certain institutions and the corresponding decay in authority of officers associated with their development. The brooding, in society, of the spirit of democracy has tended to develop the institution, to multiply its organs, to strengthen its members and to foster its general growth, but at the same time there has been a corresponding contraction of the jurisdiction of its representative officer, and a diffusion of his powers among many associates. When we recall the full meaning of *patria potestas* we are led to exclaim: "The fathers, where are they," and the patriarchs, do they live forever? Quite often the serfs have become the sovereigns, and the sovereign has been reduced to a subject. Could great Augustus have seen the base uses to which the title "emperor" had been put by barbarians his heart would have died within him.[1] And who would recognize in the common hangman, or in the distrainer of house rents, the Sheriff or the Constable of the proud Norman court? Could the voice of prophecy have

[1] Not only did the "sole power of constituting & appoynting the *Emperor* of Pascattoway" reside with a subject of the English king, the proprietary of Maryland, but the "*King* of Choptico" was presented for pig-stealing at a court leet of a Maryland manor. See Archives, 1666, p. 25, and Studies, I., No. 7, p. 34.

told Charles Martel, who ruled the ruler of the Franks, that his title of major or mayor would descend to administrators of petty villages, he would have had additional reasons for moralizing upon the deceits of human greatness. And who can begin to number the generals, the counts, and the judges in modern society?

On the other hand, institutions almost as insignificant as the *bacillus* have grown with the growth of democratic ideas, and there has not only taken place a rapid increase in size, but there has followed a correspondingly complex development of structure. A familiar illustration of the growth of an institution *ab ovo* is seen in the rise and development of the town, particularly in the history of the towns of the province of Maryland.

Without enlarging upon the town *idea*, a rapid sketch of town development may enable us to understand better the history of the towns of Maryland. Mr. Spencer in *Education* says that "the genesis of knowledge in the individual must follow the same course as the genesis of knowledge in the race," or that the individual mind must follow the same order, in its mastery of knowledge, as has been followed by the race in its progress towards civilization. This doctrine of progress may not apply to all phases of political life; and history may fail to teach us that the evolution of a local institution of a State is analogous to that of the institution in general, but the growth of the town of Maryland bears a close analogy to the growth of the town in history, especially in Teutonic history, from its amoeba-like structure to the complex organism of a chartered city.

The name town, in England, was originally applied to a single dwelling-house, surrounded by a strong hedge or fence, *tun*, *zaun*, and from which the homestead received its name. In those early days of feuds and pillage, the strong wall or the palisade around the house-lot was as necessary a part of the freeman's dwelling as is the roof to the modern temple of religion. The thane who possessed many dwellings upon his house-lot was not hindered from applying the

term town to his entire enclosure, and if he were a man of authority and had many tenants looking to him for protection, there was no law which prevented him from fortifying his home by making a strong palisade around the entire cluster of dwellings belonging to himself and his liege men and of designating the entire settlement as a town. We know that certain settlements were more favored than others, in the possession of common lands and pastures in addition to the orchards and gardens belonging to each householder, and if this whole area became enclosed, as was sometimes done, the name of town could be applied to this large enclosure. In the laws of King Alfred we frequently read of "cyninges tune," "eorles tune," the dwellings of the king, or of the earl.[1] As civilization progressed the idea of enclosure became dissociated with the term town, *zaun, toun,* and though the fence was removed, or was never erected, nevertheless, by metonymy, the name town was retained and became the generic name of all small settlements.[2]

A recent atlas gives the names of 2,500 villages, hamlets, and cities situate in Maryland.[3] It is not improbable that to each of these settlements the name town has been applied by residents of the place or neighborhood, even though the town at one end of the list may be simply a postoffice or railroad station, and at the other it may include a city of most complex organism, and comprising within its natural bounds considerably over a third part of the population of the State.

In order to understand how it has happened that the term town is applied as well to the city of Baltimore as to the suburban hotel, Govanstown, it will be necessary to have a clear conception of the town of provincial Maryland.

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[1] See De Laveleye: Primitive Property, p. 243. Nasse: Mittelalterliche Feldgemeinschaft. Wicklif says the swineherd who hired "the prodigal son" "sente him in to his toun that he shud feede hoggis." Luke xv. 15.

[2] See Von Maurer: Geschichte der Fronhöfe, III., p. 195, etc.

[3] Rand and McNally's "Indexed Atlas of the World," pp. 450-456.

During the proprietary regime there were but two chartered or incorporated cities in the province, and as Annapolis did not receive a charter until a number of years after the charter of St. Mary's had been revoked, and as each of these cities became successively the capital of the province, we may regard the one city simply as the successor of the other, as Baltimore on the Patapsco succeeded Baltimore on the Bush. The chartered city of the province of Maryland stands isolated from the towns, and became incorporated, not because of its commercial or economic importance, but simply because it was the centre of social and political life. No mention, therefore, will be made of its organization and jurisdiction until the unincorporated towns themselves have been studied.

The towns of Maryland are indebted for their privileges and almost for their origin to an Act of Assembly passed in 1683, exactly fifty years after the colonists had left the shores of England for their homes in the New World. During these fifty years one town had become so important as to be incorporated into a city, St. Mary's, but the extraordinary privileges secured by this town seem to have paralyzed the efforts of the legislators for further local government and no other town disputed its claims to pre-eminence. Other places are mentioned in the early records, during this half century, and some became the place of meeting of the provincial Assembly, but some of these places, presumably towns, were simply the residence of the governor, the mansion or landing place of some manor, or an insignificant Indian village.[1] London, Yarmouth, and York, Choptico, Saccaia and Nanjemy may have outlived their first settlers, but their subsequent history would indicate that the soil of each was better adapted to the growth of corn than to the

[1] St. John's, where the Assembly frequently sat, was a house in St. Mary's city. Archives, 1661, p. 396. St. Leonard's, Newtown, Pascatoway, Putuxent, settlements mentioned in early records, seem to have melted away like the snows of early spring.

growth of a town, and in a decade or two the plough passed peaceably over their roadbeds and ways.

Freeman, De Laveleye and other authorities upon primitive institutions point out the difference in origin of the "ings," the "hams," and the "touns" of England, names suggestive of future town settlements; by *ing* they understand the meadows fringing the banks of rivers or girding the arable slopes and knolls: the term *ham* was applied to the soil lying on the outskirts of arable land and devoted to pasturage.[1] Many of the hams, ings and towns becoming centers of social life, developed into great commercial cities. But it is probable that few towns of Maryland so originated. Little is known of the prehistoric towns of the province save their names scattered here and there in old records, but it is almost certain that all of these settlements, save the manors, had their counterpart in the numerous landings which skirt the bay and its tributaries. The innumerable rivers and creeks that ramify the state like the arterial system of the body, caused the canoe and the pinnace to supersede the cart or the carriage and prevented the growth of the cross-road settlements as in other colonies and forced the planters to do their merchandising at the tide-water settlements.

The embryonic towns of Maryland, first awakened to consciousness by the town act of 1683, embraced, in addition to the landings, other centers of activity, as the manorial settlements, the court-houses, a few forts and factories, some Indian villages, and probably a few inland settlements remote from the Chesapeake. But none of these towns and settlements, save the manors, had any organic life. While towns of other colonies were fast developing into little democracies, the *quasi* towns of Maryland remained simple settlements, with no civil or political rights, and entirely

[1] De Laveleye: Primitive Property, p. 245.
Freeman: Norman Conquest, I., p. 50.
Kemble: Saxons in England, I., pp. 59, 457, Appendix A.

dependent for their existence upon the Assembly or the Council. There is not a law or ordinance of the first half century which would indicate that any town of Maryland during this period enjoyed any privilege of immunity in addition to those enjoyed by inhabitants of other parts of the county in which the town was situated.

The institutional life of the towns of Maryland begins with the Act of Assembly passed in 1683, but not operative until 1685.[1] The measure was first proposed by the proprietary in a speech delivered before the two chambers of the Assembly at its session in October, 1683, it was heartily endorsed by the members of the Upper House, and was finally acquiesced in by the Lower House, but only upon compromise. Unfortunately the records of proceedings of the Lower House, of this period, have been lost, but the records of the Upper House indicate that the sentiment of the people, as expressed by the planters in the Lower House, was opposed to the erection of towns in the province and that they only agreed to the measures of the Upper House upon the latter's acquiescence in a bill amending the laws relating to the election of delegates to the Assembly.

Towns are usually regarded as schools of democracy, and it seems peculiar that they should be strongly advocated by the proprietary of Maryland and as strongly repudiated by the body of people. The eulogies of Baltimore can be explained, but no rational explanation has been given why the freemen themselves were so indifferent to the wider diffusion of local government.[2]

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[1] It is interesting to note that at the very time the towns of Maryland were becoming self-conscious and were beginning to feel the first impulses of organic life, the royal governor of Massachusetts, Sir Edmund Andross, had angrily told the people of Salem and other towns that "there was no such thing as a *town* in the country," and the so-called town records were not "worth a rush." Force's Tracts, I., No. 9, p. 24 (anno 1689-90).

[2] In August, 1682, King Charles II. wrote a scathing letter to Lord Baltimore, accusing him of wilfully obstructing the revenue

Many messages were passed and many conferences were held, in 1683, by the two houses, before the bill for towns became a law. The Upper House say, in a message, the building of towns "is so earnestly desired by the generality of the inhabitants" and was the first thing recommended to the Assembly by his Lordship.[1] The Lower House was the best judge of the will of the people and so expressed themselves, but the constant reiteration of the Upper House, that the erection of towns would lead to the "procuring of money and advancement of trade," and the emphasis given to these assertions by the proprietary and the committee of trade, led the Lower House to draft a bill to constitute two or three towns in each county, but the Act as finally passed by both Houses authorized the proprietary to erect thirty towns and to issue commissions to bodies of freemen to lay out the sites chosen, to sell the lots, and to supervise the improvements.[2] Succeeding Assemblies enacted similar laws, so that by the time of the Protestant revolution in Maryland, 1688, sixty-two towns were ordered to be built. The Assembly may have been spurred on by the Virginia town act of 1680, and the Pennsylvania town act of 1681.[3]

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officers in Maryland. He warns him to discontinue his practices of hindering the collections, and charges him "to take care that all our laws relating to the trade of our plantations be duly observed and executed and that all encouragement and assistance be given to the officers of our customs." Baltimore did not mention this letter to the Assembly of the ensuing year, but its contents were uppermost in his mind. The text of the letter can be found in Scharf, I., p. 289.

[1] Liber U. H. Journal, 1659/60-98, p. 490, etc., (Md. Hist. Society.)

[2] Bacon, 1683, ch. V.

[3] Hening's Statutes, 1680, vol. 2, p. 5. Hazard's Annals of Pennsylvania, 1609-1682, p. 510.

The intense desire of the proprietary for towns, and his subsequent indifference to their development, bears an analogy to the Tudors' solicitude for the towns of England and their wanton revoking of the rights of chartered cities. An act of Henry VIII. recites that by the neglect of lords of fees to rebuild towns "husbondry y^s^ greatly decayed, churchys destroyd, the servyce of God

The Assembly selected the site of the towns, but their size, name, and administration were left to the Governor and Council.[1] The title of the statute constituting them, "An Act for Advancement of Trade," and the contents of the first paragraph, that these towns "shall be the ports and places where all ships and vessels, trading into this province, shall unlade and put on shore, and sell, barter and traffic away" the imports, clearly set forth the proposed objects of the town. Of the twenty-four paragraphs of the statute, over one-half relate to commercial and revenue matters. All the sites lay near navigable streams.[2] Among the sites chosen were the city of St. Mary's; the Indian town; Choptico, his Lordship's Manor; the town at Proctor's; in Wye River, town land there; in King's creek, near the Old Town; William Price's plantation, in Elk River; on the church land, Port-Tobacco Creek; on Digges his purchase; at Pile's Fresh; at Lower Cedar Point, in Pickawaxen Hundred; at Britton's Neck, the town on Morgan's land.

The government of the towns was very simple. The entire local machinery consisted of five or seven commissioners, holding office during good behavior and as a close corporation appointing new members to fill vacancies in the board. The first duty of the commissioners was to select

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wythdrawen, crysten people there buryed not prayed for, the patrons & curats wronged, Cytees sore mynysshed," etc. 6 Henry VIII., c. 5. 7 Henry VIII., ch. I. 39 Eliz., ch. I. For an account of the spoliation of chartered cities by the Tudors, see Munic. Corp. Report (made by Parl. Com.) I., p. 17, etc.

[1] The Act of 1688 specified the names to be given to towns erected that year, 1688, ch. VI.

[2] "The canoe and the barge there took the place, in the absence of carriage roads, of the wheeled vehicles, which are now so commonly employed. At that time nearly all the settlements were along the water courses." Wenlock Christison, p. 57 (Fund Publication No. 12 of the Md. Hist. Society).

"The old towns or villages are built at the places where the rivers begin to be navigable." Rochefoucault, Travels, p. 311. See also graphic descriptions of water-travelling in Maryland as experienced by George Fox, Journal, p. 456, etc.

100 acres of land, double the amount allotted to the Virginia towns by act of 1680,[1] and with the aid of the county surveyor to divide the land into 100 lots for houses and stores, with some open places left for streets and lanes, church, chapel, market house and other public buildings. The purchase money, paid directly by the purchaser to the owner of the land, was assessed by the commissioners, or, in case of dispute, by a jury impaneled by the county surveyor. Special privileges were offered county residents in the selection of lots. A house not less than 20 feet square was required to be erected by each lot-holder before a specified time, under penalty of forfeiture. An annual quit-rent of one penny was charged to each lot. The proprietary's income from this source would not swell his exchequer, for, if the entire 100 lots were taken, the quit-rent from each town would amount to a sum less than one-half pound current money.

The town act prescribed that all imports and exports should be made at these towns, under penalty of forfeiture, and also all traffic, carried on by "merchant, factor, mariner or other person," should take place in the towns.[2] The residents were compelled, under penalty, to lease the empty or unfilled warehouses to the tobacco planters who may stand in need of them. The towns were made the centers of all financial operations. All the proprietary's quit-rents, all public taxes and fees, then payable in tobacco, must be sent to the towns and there secured like other tobacco. Four naval officers were appointed for the Western Shore, and two on the Eastern Shore, to enter and clear the shipping. The closing paragraph of the statute, probably intended by the proprietary to quell the incipient growth of democratic ideas, prescribed that all delegates to the Assembly, elected

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[1] Hening's Statutes of Va., Vol. II., p. 472.

[2] This act was not intended to deprive the wandering pedlars and mechanics of their privileges. The country gentry were not restrained from "paying workmen's wages or buying at their own plantations necessary provision for their families." Supra, ch. V., par. 13.

by the freemen of towns, should be chargeable to the towns, and not to the county as hitherto.

The duties of the commissioners were confined to a very narrow circle, but in this circle they began to exercise almost oligarchic authority. They were entirely irresponsible to the inhabitants, being appointed by the governor, and as a close corporation they could perpetuate their methods of administration, however faulty. Differences between lot-holders were adjusted by them, and they were ordered to keep records of their proceedings, and these probably were eventually deposited at the county courts.[1]

Within a few decades after the act of 1683 not less than one hundred towns were ordered to be erected, but the legislature soon experienced the fact that fiat-towns shared the same fate as fiat-money. The multitude of towns was prejudicial to the general welfare and many became "untowned," as a subsequent law expressed it. Only the fittest survived and these were few in number. An act of 1724 recites that "there are now but few towns or ports within this province."

From August 23, 1689, to April 9, 1692, the supreme authority in Maryland was the convention, composed of "Gentlemen associated in arms, for the defense of the protestant religion" and asserting the right and title of William and Mary to the province. The proprietary was not restored until 1715. During this interregnum several important institutional measures, such as the erection of free schools and parishes, were adopted and set in operation, but only a

[1] As the town act did not become operative until August 31, 1685, the present year, 1885, is the bi-centennial anniversary of their erection. The towns after their erection were seldom named in the statutes, and it is not known how many have survived the vicissitudes of the two centuries, especially as so many of them were planted not "by the wayside," but in places where they wilted and died for lack of trade. The court records of tide-water counties might reveal the inner history of many of these old towns.

few of the town acts passed by the Assembly were confirmed by the Queen, and these were special laws.[1]

A few years subsequent to the succession of Queen Anne to the throne, a ripple passed over the current of Maryland institutional history from the interference of the English ministry in matters strictly colonial. The contest arose upon the erection of additional towns in the province. The trouble began in Maryland in 1706, when the war of the Spanish Succession was at its height in Europe, the year when the bloody battle of Malplaquet was fought, and the trouble continued until 1710, the year which witnessed the fall of the Whig ministry. Marlborough had been winning splendid victories and was fast humbling the continental powers, but the public debt rose alarmingly. It was rumored that the war expenses had accumulated to fifty millions, and the queen looked towards the colonies for increased revenues. In 1705, Col. Seymour, the royal governor of Maryland, was instructed by the queen to request the Assembly of Maryland to pass acts for additional towns. He replied August 28 of the same year, "the Assembly will never consent unless compelled to building towns as her Majesty designs." The queen sought the advice of her ministry and on November 29, 1705, the Board of Trade wrote to her majesty: "Should the Assembly of Maryland . . . not comply with the additional instructions to Governor Seymour for building Towns, Quays, &c., Her Majesty may then settle Ports there by her own Authority."[2] The Maryland Assembly finally assented and passed a number of town acts. During the ensuing few years a voluminous correspondence on Maryland affairs was maintained between the Queen, her Council, the Lords of the Treasury, the Board of Trade, Gov. Seymour and the General Assembly of Maryland, and the commissioners of customs.[3]

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[1] From 1688 to 1706, the Assembly passed no laws to erect new towns.

[2] Sainsbury Calendar, B. T. Maryland, Vol. X., p. 339.

[3] In November, 1705, Mr. Popple sent a communication to Mr. Lowndes in which the "Board of Trade informs the Lords of the

The long and vexatious proceedings were summarily concluded by an order of Council, Dec. 15, 1709, "declaring Her Majesty's disallowance" of the town Acts of Maryland.[1] By this order at least threescore paper towns were blotted from the geography of the province, and the acts of Assembly directing that certain towns be "revised, erected, or deserted," were repealed.[2] During these years, the proprietary lost his palatinate regalia, being a Catholic, and could take no direct authority in the civil administration of the province. He continued, however, to collect his quit-rents and port duties.[3]

A number of the towns ordered to be erected escaped the fate which befell so many, and became thriving settlements. In the struggle for existence the manor, with its numerous buildings, seemed destined to outlive the puny towns, but the one institution had arrived at the full bloom of its existence, while the other was but bursting the bud. At the old manor, we see a well-tilled farm, with orchard, gardens and lawns, a well-constructed and roomy mansion, perched upon a commanding site, its servants' quarters hard by, shops, barn, warehouses, store, stables, tenants' dwellings, quay, and other accessories, while the little town could exhibit but a few frame houses and shops built along a straggling, hilly

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Treasury that additional Instructions were sent to Governor Seymour for building of Towns, Quays, &c., in Maryland, which will facilitate the execution of the scheme proposed by him for the improvement of Trade." Sainsbury Cal., B. T., Maryland, Vol. X., p. 334.

[1] The full history of these proceedings cannot be ascertained, owing to the records being inaccessible, but it is not improbable that the change of government, at this time, in England was the cause of the change in the Queen's colonial policy.

[2] Among the towns to be deserted was old St. Mary's. The county court of St. Mary's county was removed to "Shepherds Old Fields" and commissioners were "impowered to expose to Sale the Public buildings and Lands thereto belonging, in the town of St. Mary's." This same year, 1708, Annapolis, the new seat of government, received a charter from the royal governor of Maryland. Bacon, 1708, ch. 3, 7.

[3] Bacon, 1692, ch. 17.

and muddy road and probably adjoining a miasmatic stream. But by the time the Calverts were restored to power, many towns had become centres of social and industrial life. Alsop might truly say, "here's no Newgate . . . nor Ludgate . . . nor any Bridewells," but the stone court house, its doors covered with notices, the prison occupied by the poor Quaker, sentenced to be "kept in chaynes and bake his own bread,"[1] the pillory, stocks, whipping-post, ducking-stool, branding irons, all indicated that here justice had her seat and balanced law and liberty. The little wooden parish church with gabled roof and swinging vane, the vestry, the rectory and parochial library on the glebeland, indicated the dominance of a Protestant government in the province. The ale-houses and ordinaries, with their zoölogical signs of the Black Horse or Red Lion, invited the planters, the clergy, the judge, and the councillor, to their hospitable tables.[2] In the shops and stores could be seen merchants and skippers from New England, Holland, England, Barbadoes and Virginia, receiving tobacco, furs and meats in exchange for wines, liquors, sugar, salt, furniture, silks, serges, and cloths. Says Alsop, when the shop keepers "spy profit sailing towards them with the wings of a prosperous gale then they become much familiar."[3] Swine, cattle, geese, and all small animals, were forbidden to roam the streets and lanes, but the law was seldom enforced.

Around the little settlement was the fence, generally too

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[1] Norris, "Early Friends in Maryland," p. 9 (note).

[2] The following observations of an eye-witness, an English traveller who journeyed along the Eastern Shore, in the middle of the last century, give us a glimpse of a provincial town: "At our arrival at Snow Hill," he relates, "I took up quarters at an ordinary and found them very good. . . . The Church and all the houses are built of wood, but some of them have brick stacks of chimneys. Some have their foundations in the ground, others are built on puncheons or logs, a foot or two from the earth which is more airy and a defense against vermin. . . . The town is very irregular, and has much the aspect of a country fair, the generality of the houses differing very little from booths." Coll. Ga. Hist. Society, IV., p. 43.

[3] Alsop, p. 50.

rude to be ornamental and too insecure to be a defence. Annapolis town was provided with a hedge, a ditch and "an handsome pair of gates to be made at the coming in of the town."[1] The town fence of Baltimore was frequently pilfered by tramps and used for firewood. The town commissioners were aware of the names of the offenders, but they had no authority to punish them, such action being beyond their jurisdiction.[2]

Beyond the town proper was the town common, varying in size from fifteen to three hundred acres, and furnishing fuel and pasturage to townsmen.[3] The common of Annapolis was used in part as a "garden, vineyard, or summer-house," for the use of the governor, also as a place where "any baker, brewer, tanner, dyer, or any such tradesmen," whose business might "annoy or disquiet" his neighbors, might ply his vocation undisturbed.[4]

No important changes were made in the powers conferred upon the town commissioners, during the proprietary government. Here a town received one or two additional officers, as market clerk, wharfinger or inspector, but as a rule these officers were appointed by the governor or county commissioners. Charlestown, Cecil county, was specially favored. It had an overseer of streets, roads and bridges, appointed by the town commissioners, and its inhabitants received the extraordinary privilege of electing commissioners to fill vacancies in the local board, provided there were living in the town "the number of twenty fixed and settled inhabitants capable by land or estate" to vote for burgesses to the Assembly.[5]

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[1] Ridgely, Annals of Annapolis, p. 90. Bacon, 1742, ch. 24.

[2] Baltimore Town Records, Nov. 21, 1752. (In manuscript.)

[3] Bacon, 1744, ch. 22, pp. 18, 21. Many towns seemed to have possessed a common, without being aware of its historic significance. A Baltimore newspaper says: "on Saturday morning, four companies of the town militia were drawn up on the common where they were received by Colonel Washington." Maryland Gazette, May 9, 1775.

[4] Bacon: Laws of Maryland, 1696, p. 24.

[5] Bacon, 1742, ch. 23 and supplementary acts.

During the hot days of summer and the cold, blighting winter season, when the roads were impassable, the towns of Maryland remained as lethargic as the Dutch villages described by Irving, but in the autumn they were the scenes of activity and enjoyment. It was at this time that the annual fair was opened, and important court sessions held. The arrival of foreign vessels,[1] the flocking in of tax-payers and debtors, the gathering of planters and of lords of manors to purchase winter supplies,[2] the parade of the trained bands, the races, the entertainments at the ordinaries, the auctions of slaves and servants, all combined to infuse much life, motion, and real interest into town life. The advent of new ideas and of new institutions in Maryland has banished almost entirely the picturesque local scenes once seen in the autumn, but in the Piedmont regions of Virginia, "court-days" still perpetuate certain customs formerly common to both colonies.

The unincorporate towns of the province, thus far considered, have been market towns or villages. We have seen that they were erected as marts and entrepots and were endowed with no special political or civil privileges. We found that these towns possessed no organic life, no by-laws, no tungemot, no town house, no selectmen, no local elections, no mayor, no aldermen, no councilmen, but were a collection of stores, warehouses, quays, and government buildings. The majority of these towns, like the pueblos of California, contained neither mission or presidio, church

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[1] Bampfylde-Moore-Carew, King of the Beggars, gives in his "Apology," graphic accounts of old Maryland customs. He recites how the captain of a foreign vessel when nearing port fired guns to announce his arrival, and how the deck of the vessel when anchored was converted into a market flocked by planters, and how the "bowl of punch went round merrily" amid the oaths, jargon and cries of the traffickers. See p. 100, *et al.*

[2] A number of towns in Maryland were designated by name as places for holding markets, generally held weekly; in some towns semi-annual fairs were held. The market towns of England became famous as centers of inland traffic. See Stubbs, I., p. 94.

or fortification, and grew not around the chapel[1] or school, but around the custom-house or court-house.[2]

There was one exception, however, to the monotonous uniformity of towns, and this was the metropolis, the capital, whether we regard it as located on the St. Mary's or on the Severn, St. Mary's City or Annapolis.

Yoamaco, the chief city of one of the forty tribes which composed the great Powhatan confederacy, was well suited to become the chief city of the settlers. Beautiful for situation, commanding a wide prospect of rolling ground covered with great forests of primeval verdure, and well sheltered from the storms which at times sweep along the Chesapeake, it seemed destined long to outlive the colonists who had founded and beautified it, but its fate was settled when the Puritans became dominant and its altars were removed to a distant site. For a half century St. Mary's exhibited signs of vigorous life, but it could not withstand the shocks of civil disturbance and its desolation has become complete; living now only in legend and romance it well deserves the name of the Lost City of Maryland.[3] Its buildings, its records, its charter, its very approaches and ways have long since perished and its name alone remains.

One document has been preserved which indicates that the municipal history of Annapolis was but the repetition of that of St. Mary's, and that the form of government, the jurisdiction of the officers and the privileges of the freemen

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[1] Tomlins, in his Law Dictionary, says "there ought to be in every town a constable or tithing-man, and it cannot be a town unless it has a church."

[2] Many quaint names have been applied to sites now occupied by thriving towns. The city of Washington, D. C., is built upon a tract of land for many years famous among the Indians for its great council fires. When granted to the whites, it was known successively as "Widow's Mite," Roon, Carrollsburg and Hamburg. Tradition says a Mr. Pope purchased a large tract of land within the present bounds of Washington, and named it Rome; the demesne was called Capitoline Hill, and an adjoining creek, the Tiber. De Vere: Rom. Am. Hist., pp. 142-3.

[3] Kennedy: "Rob of the Bowl" gives a spirited legendary narration of St. Mary's. See also De Vere: Romance of Am. Hist., p. 209.

were alike in both cities. This document is a petition from the inhabitants of St. Mary's to the General Assembly, protesting against the removal of the seat of government to Annapolis.[1] But by Act of the Assembly of 1694, held at St. Mary's, the port of Annapolis was made the future seat of government.[2]

The original charter of Annapolis is lost, but a copy has been preserved in a small duodecimo book, bearing no date, preserved in the Md. Hist. Society. This charter was granted by Governor Seymour in 1708, but previous to the granting of this royal charter, the town had been incorporated in 1696 by Act of Assembly, held under William III. By the terms of its first incorporation the government of the town was entrusted to eight freeholders, called "Commissioners and Trustees." Their duties were administrative, judicial and executive. The first board of officers was appointed by the Assembly, and included the governor, members of his council and town inhabitants. The office was held for life and vacancies were filled by a general election of the freemen. The freemen of the town included the governor, the council, the burgesses of the Assembly, resident freeholders, and all persons having "a trade in the town pasture." The privilege of suffrage was also granted to certain mariners and traders.[3] The town commissioners were

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[1] See document in Scharf, I., p. 345.

One of the most curious constitutional questions arising during the last years of Cecilius' government was the extent of the jurisdiction of St. Mary's city. A certain burgess, Morecraft, insisted that the proprietor's house in Wild Street, Westminster, England, must be regarded as legally within the bounds of St. Mary's city, Maryland, and that an offense there committed against his lordship was triable before the court of St. Mary's. See Archives, 1669, pp. 166, 167, 170, 172.

[2] Bacon, 1649, ch. 29.

[3] The freemen were entitled to the right of suffrage, to judicial procedure in local courts, to hold lots in town pasture, &c. The freedom of Annapolis was extended to those only who were interested in its commercial prosperity. The freedom of English towns was obtainable either by purchase, free gift, birth, marriage, apprenticeship or guild membership. See Mun. Corp. Reports, I., pp. 18, 19.

authorized to hold courts for trial of causes civil and criminal, and to award judgment and pass sentence, but not to extend to life or member or to exceed the sum of five pounds sterling or one thousand pounds of tobacco.[1] They were further instructed to make by-laws and rules for the good government of the town, to regulate the appointment of lots in the town common or "town pasture,"[2] to hold a weekly market and an annual fair.

The act of incorporation of 1696 was superseded by the royal charter of 1708. The war of the Spanish Succession was raging at this time in Europe, the war expenses of England were accumulating rapidly, the debt was assuming great proportions, commerce was falling off and trade was

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[1] Bacon, 1696, ch. 24.

[2] Many of the towns of Maryland had a town common, or the enclosure held in common, but the peculiar uses to which some were put indicate that the name had descended to persons unconscious of its origin or intent. The term "townland" frequently occurring in the old records evidently meant, when first employed, a kind of town common, and its use would indicate that in Maryland it antedated the town. The town act of 1684 located a number of the new towns upon existing town lands. Nearly all of the twelve ports erected in 1669 were ordered to be built "afore the townland," as "in Baltimore county, afore the Town land in Bush river." Proclamation, April 20, 1669. An act of 1671 alludes to "the towne land commonly called St. Maries ffield and conteyning one hundred acres." Archives, 1671, p. 297. All immigrants previous to 1638 were allowed a portion of "St. Mary's field." Kilty, p. 33. It is not improbable that the town-lands of the counties of Maryland were similar in use and area to the town-lands or ploughlands of Ireland, the smallest subdivision of the county and containing generally about 120 acres. In Ireland they had been employed for fiscal districts, but this use was abandoned there. Liber Hiberniae, 2, VII, pp. 335, 367, 374. Doubtless the town-lands of Maryland were originally but the town commons, so to speak, of the counties, or certain sites along the sea-board and river banks, devoted to the general uses of the county inhabitants for trade and other purposes, but having their title vested in the proprietor. Town-lands of the counties at times became the town commons of the towns, and in later years the old term town-land was revived to indicate town lots in general. When Annapolis became incorporated a distinction was made between the town-land and town-common. Bacon, 1694, ch. 8.

almost paralyzed. It is not improbable that the English ministry hoped colonial trade would increase the revenues, hence the privileges allowed cities in America. The preamble of the Annapolis charter described the town as "a very pleasant, healthful and commodious place for trade."[1]

The charter vested the government in the hands of a Mayor, Recorder, Aldermen, and Councilmen. The Mayor held office for one year, and was elected from among the aldermen by the municipal board, consisting of mayor, recorder, and aldermen. The same body elected the ten councilmen from among the body of freemen. The vacancies in the board of aldermen were filled by the remaining aldermen from among the common councilmen. Briefly, the mayor was selected from the aldermen, the aldermen from the councilmen, and the councilmen from the body of freemen. The city government was virtually a landed oligarchy, the board of aldermen being the controlling power. Seeds were sown, which tended to develop into the entire independence of the governing body from the main body of

[1] A very stoutly contested constitutional question arose upon the bestowal of the royal charter to Annapolis. In 1704, the royal governor, John Seymour, probably influenced by the commercial distress of England, had suggested the advisability of re-incorporating the chief town of the province and bestowing upon it special privileges as a center of trade. But the Assembly refused to confirm his proposition and no action was taken. But in 1708, Governor Seymour conferred the new charter by his own authority and in the name of Queen Anne. The Lower House of the Assembly immediately repudiated his action and refused to grant seats to the delegates from Annapolis. The governor despatched a conciliatory message to the Assembly, in which he urged that he had not overstepped his prerogative and begged them to confirm his ordinance. The House refused to retract and was dissolved by the governor. The new Assembly proved as unmanageable as the former and insisted that the chartering of cities in Maryland belonged to the palatinate regalia of the deposed proprietary, and that no royal governor could exercise this prerogative without special instructions from the Queen. A conference, however, was held by the Assembly and the governor, and the House finally agreed to assent to the new charter, after making some changes in the instrument of incorporation. See Bacon, 1708, ch. 7; Upper House Proceedings, 1699-1714, pp. 946-956; McMahon, I., p. 257.

freemen, and to bring forth a form of rotten municipality so abundant, in past years, in England and Ireland. But other counteracting influences were at work, and Annapolis seems to have escaped the financial and political evils which befell many towns of Great Britain.[1] The democratic principle enunciated by King Edward I., *quod omnes tangit ab omnibus approbetur*, was gradually leavening the freemen of the city, and the colonists in general.

The jurisdiction of the town corporation was very extensive, including matters fiscal, legislative, executive, and judicial.[2] The mayor, recorder, and aldermen were appointed justices of the peace, and could administer justice individually or sitting as a court. The principal courts held were the "court of pypowdry" for summary trials of offences occurring at the annual fair, and the "court of hustings," for trial of civil offences. The jurisdiction of the latter court was not unlike the old Saxon "hustings" (from *hus* = house, and *thing* = assembly.) Mention is made of "Mayor's court" and "Recorder's court."

The municipality was authorized "to execute all the laws, ordinances, and statutes," enacted for the government of the city, and was impowered to levy and assess taxes under certain restrictions. The mayor, recorder, and aldermen, were also made judges of election.

The legislative powers of the corporation are witnessed, in part, from the so-called by-laws. Among them we find laws regulating the fees of officers, and specifying their duties; also laws relating to streets, apprentices, servants, and slaves, public buildings, wagons and other vehicles, inns

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[1] Mun. Corp. Report, I., p. 17. Lynch, Cities and Towns of Ireland, pp. 55-60.

[2] In 1676, the corporation of St. Mary's received all the property of Mr. Robert Cager, in trust for the use of St. George's and Poplar Hill Hundreds, to support a Protestant ministry in these hundreds. The hundreds, not being incorporated, could not legally hold the property. Archives, 1676, pp. 530-531.

and coffee-houses, markets, fires, the dock and harbor, etc. The appointment of petty local officers was entrusted to the municipality. The city was represented in the General Assembly, by two delegates, elected by the freemen, and by law entitled to but one-half the pay of county delegates. The right of suffrage was given to all who had a visible estate of twenty pounds, and to all residents of the town who had served an apprenticeship to some trade for a period not less than five years; but this apprenticeship must have commenced at Annapolis. Every voter must swear to bear allegiance to the city and to uphold its dignity.

The city of Annapolis, notwithstanding its faulty constitution, grew in wealth, learning and social distinction.[1] Towards the close of the century, it had even aspired to the rank of the Athens of the colonies, notwithstanding the contemporaneous assertion of the learned Adam Smith that "those towns which are principally supported by a constant or occasional residence of a court . . . are, in general, idle, dissolute, and poor."[2] By the Bill of Rights, adopted Sunday, November 3, 1776, the city of Annapolis was secured in all "rights, privileges, and benefits, agreeable to its charter and the Acts of Assembly."[3]

It is unfortunate for the study of the local institutions of Maryland, that its only incorporate cities were the provincial seats of government. The capital city bore to the colonial government, a position analogous to that sustained by the city of Washington to the national government, the local autonomy being subordinated to the general welfare. In the early history of the province, when the powers of government were not so clearly differentiated as at present, the General Assembly was the pivotal point of administration; its paternal influence was very marked; it was the main spring that gave momentum and direction to all local insti-

[1] Eddis, Letters from America.
[2] Wealth of Nations, I., p. 338 (Rogers).
[3] Md. Bill of Rights, 1776, par. 37.

tutions. The free play of its legislative enactments was, at times, checked, not by the protests of freemen in local assembly, but by proclamations of the King or by ordinances of the council. The inevitable conflict between prerogative and privilege, between proprietor and people, was maintained almost entirely within the halls of the General Assembly, and at no time did any city or town rise into prominence as a champion of democracy or an ally of aristocracy. During the periods of greatest moment, when foreign foes were harrying the Chesapeake, and the savage aborigines were bringing death and ruin to many families; at times, when the government was seized by rebels and the palatinate regalia usurped by a stranger; during periods of religious intolerance, financial depressions, internecine wars, when the cheek of man paled from dread, and the heart of woman melted with fear, the cities and towns of the province were as indifferent to their environment as the stocks and stones of their highways. It was not until the eve of the overthrow of the proprietary government, that a few towns awoke to self-consciousness and lent their aid to the cause of revolution, but the General Assembly still maintained its legislative and executive supremacy, and in the time of struggle and warfare, it delegated its powers for local administration, not to the city or town, but to the county, the hundred, and parish. Many years elapsed before the leaven of democracy thoroughly permeated the local institutions, and caused the people to recognize that a town was something more than a settlement enclosed within a hedge or fence, but was capable of becoming an *imperium in imperio*, a little commonwealth within a large republic, a self-governing institution endowed with all the attributes of a living organism. Palgrave says that "throughout the west of England there was scarcely a town in which the statue of Athelstane was not erected," owing to the respect held for the young prince for his unwearied protection of towns.[1] But in Maryland

[1] Palgrave, p. 182.

no Athelstane had arisen during the proprietary regime to foster the towns, and although scores were built, but very few were able to endure the ravages of time and to profit by the reviving influences of the civilization of the present century.

The modern towns of Maryland illustrate all phases of local political development, from the inland village with its single patrol or constable, to the great commercial metropolis with its complex structure, but it is possible to classify them into three ranks: (1) those towns directly and entirely under the county jurisdiction; (2) the towns partly self-governing and partly under the county commissioners, and (3) the towns completely separated from county authority. These towns may be respectively designated the village, the town corporate and the city, but this designation is not sharply made in popular language.[1]

The villages of Maryland have multiplied rapidly during the present century. Changes in land tenures, inland improvements, the location of mills and factories, commercial enterprises and many other causes have led to the erection of villages. Some of these villages, like Brookeville, are the settlements of large families, residing in one place, like the Saxons of Ancient Britain,[2] while others have been aggregated together through the individual or combined influences of the court-house, inn, mill, church, factory, school-house, store, post-office, railroad station, landing, hotel, etc.

The political life of the villages is *nil.* They are simply settlements within the county and entirely subject to the

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[1] Dillon's distinction between "city" and "town" is entirely foreign to Maryland. By *town* he means a pure democracy and by *city* a representative democracy. See Dillon: Mun. Corp., pp. 37-39.

The legislators of Maryland have been very careless in the use of town titles. One statute makes mention of the "town of Chesapeake City," another of the "town of Ocean City," while a third mentions the "village of Leonard Town." Manchester was known in the general laws as borough, town and village, and numerous places are called town and village in the same statute.

[2] Green: History of the Eng. People, I., sec. I.

county commissioners upon all questions of local government. Some of these villages or unincorporate towns may contain hundreds of leaseholds, as Towson, Baltimore county, and yet in local matters be entirely governed by a board of county commissioners sitting several dozen miles away. It is reported that not infrequently the incorporation of towns is resisted by county commissioners for fear of losing political influence. One town is known to have forfeited its corporate rights and to have become merged into the county jurisdiction because of the political heresy of its residents. The principle in physics known as the conservation of energy has an analogy in the local life of the Maryland town. The gain of the town is the loss of the county, and no board of county commissioners cares to see its administrative powers frittered away among the towns and villages of its territory. Here in a miniature way can be seen the working of the two forces, localization and centralization. Sometimes a small town has found itself "seriously oppressed" by incorporation, and has sought to relieve itself of the "great inconvenience" by praying for a repeal of the act of incorporation.

The first groping of embryo towns after political life is interesting to notice. Here and there can be seen a village conscious of its increased vigor, seeking a higher existence and claiming special recognition from the county commissioners. New Windsor obtains one constable, Cambridge is only satisfied with two constables. These constables must not simply serve writs and execute warrants, but they must also seize stray swine, act as inspectors, visit suspected places, arrest suspicious characters and disperse tumultuous gatherings. Other towns are allowed by the county commissioners a board of town commissioners to look after certain minor town matters. The progressive growth of a settlement from a village to a town corporate is seen in the history of Rockville, Montgomery county. In 1801, a board of five commissioners was appointed by the General Assembly to resurvey the town lots, lay out streets and lanes, and

make a plat of the town for deposit in the county court. A town constable was appointed by the levy court of the county. In 1802 the board of town commissioners was reduced to three persons, and they were instructed to appoint two collectors of taxes. The Assembly, in 1805, appointed a new and distinct commission to lay off an addition to the town, and in 1826 the levy court was authorized by the Assembly "to appoint three persons residents of said town, to be denominated trustees of Rockville, whose duty it shall be to superintend the repairing and improvements of the streets and lanes." In 1860 the town became incorporated.

Two other types of the village remain to be considered, those whose commissioners were appointed by the General Assembly and those which elected their town commissioners, though in neither case was the village or town a municipal corporation.[1] The commissioners of Oxford had perpetual succession, while in Denton vacancies were filled by a general election of town residents. In Chestertown, the commissioners appointed by the Assembly held office for one year, their successors being elected by the town. The inhabitants of Liberty annually elected two tax officers, known as superintendents. The town of Charlottesville was laid out and administered by a board of commissioners

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[1] The commissioners of the town of Princess Anne, appointed by the General Assembly, were authorized to appoint the town constable, but the town patroller was elected by the inhabitants, at a general town election, and was amenable for neglect of duty to the town overseer. Laws of Md., 1802, ch. 39.

In 1804, the town commissioners of St. Michael's, appointed by the General Assembly, were authorized to make and execute all laws and ordinances, necessary to preserve order and decorum in the town, "not contrary to the laws of this State or of the United States." And yet in 1817 the streets of St. Michael's were declared by the commissioners to be in wretched condition because "the said commissioners have no power by law to compel the inhabitants to work on and repair them." Many towns have since suffered from want of coercive power on the part of those authorized to maintain their welfare.

appointed by the trustees of Charlotte Hall School. This town was a type of the old English towns erected upon the demesne of the lord, or of some monastery. It was erected for speculative purposes, to swell the revenues of the school, but though the purpose was a worthy one it proved a failure, and the trustees of the school became learners in the school of adversity and were forced to recognize that a town grows not as a mushroom, to full maturity in a night, but silently and gradually as the oak from the acorn.

The quarter of a century succeeding the war of 1812 was the renaissance period in the local institutions of Maryland. During this period the spirit of democracy diffused itself through the State and brought about the adoption of many improvements in the political and social life of the people. Schools, suffrage, finances, land tenure, courts, internal improvements, the council and the Assembly all experienced changes more or less marked. County succeeded county in the incorporation of its commissioners and town after town laid claim to corporate rights.

To the question what was meant by incorporation of a town, different answers can be given according to the extent of privileges granted different towns. There has been in Maryland no general law for incorporating towns. The corporate name conferred, the number of officers, and their powers and jurisdiction, are specially mentioned in each act of incorporation. Among the terms applied to the corporate body are "moderator and commissioners," "president and commissioners," "chief bailiff and commissioners," and "burgess and commissioners." The chief officer was simply the presiding officer of the board, and in general he possessed no distinct judicial or executive powers, but sometimes he was impowered to act as justice of the peace. Hillsborough and Cumberland may be taken as two extreme types of corporate towns. In 1822, the commissioners of Hillsborough were authorized to make by-laws for the good government of the newly incorporated town. The inhab-

itants of this town, in 1827, interpreted this act of incorporation by declaring that "one of the principal objects of [it] was to prohibit swine from going at large" in the town. In most towns, however, incorporation meant something more than the power to impound stray animals. When Cumberland was incorporated in 1815, the commissioners received almost as many privileges as did the mayor and city council, in 1833, when the town became a chartered city. The commissioners were instructed to open and repair streets, to restrain disorders, to impose fines, to levy taxes, and to appoint subordinate town officers. But the distinction between a corporate and unincorporate town was not always drawn, since some towns were administered at times by several boards of commissioners, created for different purposes, some being incorporated while others were not. Baltimore town was for many years governed by an unincorporate commission whose members were known as town commissioners; but some years before it became a chartered city, the Assembly authorized a special commission elected by the inhabitants to superintend the streets and lanes of the town. This commission was incorporated, and its members gradually assumed very large powers, and finally it virtually controlled the town administration, although its members continued to be known as special commissioners.[1] In some instances, at least, four distinct boards of commissioners have been constituted by different bodies to govern in one town, and appointed, respectively, by the General Assembly, the county court, the county commissioners, and a fourth board elected by the town residents. Frequently these local boards had the same regard for one another as did the ancient Samaritan and Jew. The confusion of local administration owing to these various governing boards is seen to some extent in the town of Baltimore, just previous to the beginning of the present century.[2]

The chartered cities of Maryland are six in number, Balti-

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[1] Compare Acts of Assembly, 1729, ch. 12, and 1782, ch. 39.

[2] Brown: Boundaries of Baltimore, pp. 23, 26, 36, 59-67, 73. Baltimore *Sun*, November 21, 1882.

more, Annapolis, Cumberland, Hagerstown, Frederick, and Westminster, but only one, Baltimore, is completely divorced from the county, in possessing its own sheriff, courts, etc.[1]

The distinction between city and town is as poorly defined as that between the corporate town and the village. No city of the State is secure in its local affairs from legislative interference except the city of Baltimore, which has its form of government and the functions of its officers guarded by the State constitution.[2] In general the cities have a more complex structure and have their privileges specified with more detail; but some town commissioners have larger jurisdiction than the mayors and councils of some chartered cities. In theory, the commissioners of towns corporate are but a local standing committee of the Assembly, but by force of custom these commissioners have not been restricted to the Assembly burgesses and the power of their appointment has gradually devolved upon the town inhabitants. The chartered cities are, however, municipal corporations of a higher type, but like the towns corporate they are but creatures of the General Assembly, since their charter is at any time revocable by the Assembly, unless protected by the State constitution. In the towns corporate it was the town corporation which was specially benefited, and this corporation might or might not represent the will of the people; but in the charters granted to cities the interest of the people and the welfare of the community become the paramount aim and the people themselves become final arbiters of the fate and prosperity of the municipality.

A difference is noted between the corporate names of towns and cities. The legislative authority of the city is vested not in a board of commissioners, but in a council, and the head official of the city is not a president or chief bailiff, but a mayor.[3] With but one exception the mayor of

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[1] See Const. of 1851, art. IV., sec. 8, etc.

[2] Constitution of 1867, art. XI.

[3] Each chartered city of Maryland has a different corporate name, but this is probably a coincidence. The statutes mention "the

each city is authorized to exercise the powers of a justice of the peace, and, with exception of Baltimore and Frederick, he presides over the deliberations of the city council. The subordinate officers of the cities are either nominated by the mayor and confirmed by the council or elected by the citizens at a general election.

When we examine the internal machinery and the jurisdiction of the municipalities we find almost as much diversity as in their corporate names. The appointment of officers, the levying of taxes, the enactment of laws, the administration of justice, the maintenance of peace, the care of public health, vary in method more or less for each city. The metropolis of the State has its police board appointed by the General Assembly and its school board appointed by its city council. The commissioners of these boards, though expending nearly one-half of the city's annual revenues, are not responsible to the city inhabitants, nor to the chief executive, the mayor.[1] Other cities are likewise checked in the free play of local administration, either by the General Assembly, the county commissioners, or the county court. In no city of the State is there a harmonious working of the local machinery; external interference is constantly at work, and at times to the detriment of the city's progress, and to Maryland the words of a well-known mayor of a great metropolis are applicable. He says, "The majority of our municipal charters as they stand to-day entirely fail to represent the experienced judgment of the most capable men in the community as to what is the best and most practical

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Mayor and Councilmen" of Cumberland; "Mayor, Recorder and Aldermen" of Annapolis; "Mayor and City Council" of Baltimore; "Mayor and Common Council" of Westminster; "Mayor, Aldermen and Common Council" of Frederick, and the "Mayor and Council" of Hagerstown. The presiding officer of some village commissioners is also called "mayor."

[1] The recent charter of Hagerstown, ratified by the people there in March, 1884, gives purely legislative power to the mayor and council, but lodges all control of the streets, including repairs, lighting, etc., also the police, etc., in the hands of a commission known as "street commissioners."

organization of the administrative agencies of local government."[1]

One important feature of towns has been but incidentally mentioned, namely, the town area, or the territorial jurisdiction of the town officers. The standard area of the old towns was 100 acres, but the size of modern towns has been defined either in the charters or in supplementary statutes. Some of the larger cities and towns have frequently complained that owing to the impossibility of enlarging their bounds their municipal life has been stunted and their progress has been stayed.[2] It is urged by cities desiring more territory that owing to the neglect of suburban residents to co-operate with the city authorities many evils have been caused; the public health endangered, and law and order violated; trade and travel hindered by the bad management of suburban streets and roads, municipal taxes increased, and many burdens borne by the cities which should be shared in part by that portion at least of the county immediately girding the city proper. There can be no objection to the principle that the progress of a city may be stayed for want of adequate territory, but the best means of acquiring this territory is a question in politics not easy to solve. The injurious results of insufficient town area have been experienced by many towns of England. A recent commission says, "In many cases great inconvenience results from the want of extension of the corporate authority over the suburbs; and these evils are likely to recur continually, unless ready means could be afforded of enlarging the boundaries from time to time."[3] This evil was sometimes obvi-

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[1] Mayor Grace: Harper's Magazine, September, 1883.

[2] A writer of the last century, after describing the three towns of St. Mary's, Annapolis and Williamstadt (Oxford), says: "The other settlements of this province scarce deserve the names of villages, and there are hamlets in Pennsylvania much more considerable than the three cities of Maryland put together." Gent. Mag., vol. 25, p. 499 (Nov., 1755).

[3] Eng. Mun. Corp. Reports, I., p. 44.

ated in some Maryland towns by the Assembly impowering town commissioners to extend their jurisdiction over the suburbs of the town, *e. g.*, in Georgetown, now included in the District of Columbia. The portions of the county lying one-fourth of a mile beyond the limits of the town, and to the middle of the Potomac river were considered precincts of the town, and within the jurisdiction of the municipality, in certain matters.[1]

The old and the new towns of Maryland are well typified in the neighboring towns of Joppa and of Baltimore. The former town, probably settled over two centuries ago, was located upon the broad Gunpowder river, near its entrance into the Chesapeake, and well deserved a name, whose meaning is *beauty*. The name of Paradise bestowed upon a neighboring settlement gives us a hint as to the environment of this forest region. For many years Joppa reigned the mistress of the Chesapeake bay. Within its borders were the county court-house, the chapel, the county prison,[2] several inns and a number of commodious warehouses and stately mansions. In its harbor were vessels from New England, the West Indies, and ports of Europe. It became the seat of the social and civil life of the county and of the adjoining hundreds and parishes, and being located upon the public highway leading to the Northern colonies, it became a well-known resort for travellers and merchants. But owing to the indifference of its citizens, the faulty form of local government, the jealousies of its neighbors, the enterprise of the inhabitants of neighboring towns, the glories of Joppa faded away and its candlestick was removed to the little settlement located on the Patapsco river, sixteen miles to the southwest. When Whitefield visited Joppa, in 1739, he saw the town in its decline. He calls it a "little town."[3]

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[1] Laws of Md., 1789, ch. 23.

[2] One section of the prison yard was known as the "Amen Corner," probably a corruption of *amend*, or *amende*. See Scharf, II.

[3] Whitefield's Journal, Phila., 1740. He also wrote that in Maryland there was "scarce any town worth mentioning."

Within a half century after the visit of the great evangelist, Joppa had passed into the list of "deserted" towns and has since become so desolate as to make its site almost an enigma. Baltimore county has many "Joppa roads" traversing it, but it is only lately that the convergent point of these roads has been ascertained. The destruction of the town has been complete. Its warehouses have rotted away, its wharves have disappeared, its harbor has become filled with alluvial deposits, its streets have been turned into ploughed fields. Upon its very site have camped the Indians and in the ruins of the silent town they may have kindled their camp-fires from the rotten timber of its fallen houses.[1] A few neglected grave stones, several heaps of brick and rubbish, and a solitary mansion, belonging to one of the oldest families in the State, are about all that remain of the once famous sea-port town of provincial Maryland. One inscription, of remarkable simplicity, upon a substantial, well-preserved monument, tells in brief the commercial story of the now deserted town: "David McCulloh, Merchant in Joppa." Joppa, old in name and associations, gave place to the modern town of Baltimore on the Patapsco. The name of "Joppa" has lately been resuscitated and happily given to a new steamboat which now plies the Chesapeake Bay, as does the "Johns Hopkins," both names symbolizing a commercial as well as an historical idea.

Baltimore, or New-town as Whitefield names it, was erected, it is true, nearly fifty years before the close of the

[1] In the Historical Seminary of the University there are preserved several relics of old Joppa, including a stone Indian hatchet found near the water's edge, near the ruined remains of an old building, probably a tobacco warehouse. The site of the chapel and court house was discovered in a ploughed field hard by. See Baltimore *American*, November 25, 1882. It is interesting to note that these remains of one of the "lost towns" of Maryland constituted the nucleus of the now flourishing Seminary Museum, which includes the Cohen collection of Egyptian relics, and many coins, weapons, specimens of pottery, etc., from various parts of the world.

proprietary government, but it was not till after the first president of the confederated colonies had taken his office at the seat of national government that the town was erected into a municipal corporation. The rapid growth of Baltimore since its incorporation, exceeding perhaps that of any other city of the original colonies in proportion to its age, indicates that even in Maryland there are great possibilities for town organization. The conjectural etymology of its name, *Balty*, *balti*, or *bally* = town or village, and *more* = great or large, "so that Baltimore signifies the great or large town, village or townland,"[1] is a happy omen of even more prosperous days. The more modern derivation of *balt* = belt, and *more* = great, is more in accordance with the views of its inhabitants that the Belt which surrounds the city as a strong cordon, restricting its bounds to an area probably less, proportionately to its inhabitants, than that of any other American city, is one great obstacle to a symmetrical growth of the great metropolis. Baltimore has by no means an ideal form of government, nor would its financial or administrative history indicate that there have been no blemishes upon its escutcheon, but the single fact that the metropolis of the South is located here, in a soil which for many years was most sterile in local institutions, is a strong argument that in other parts of the State there are sites only waiting the magic wand of good local government, business enterprise and capital, the opening of good roads, and the more thorough employment of the many modern means of internal communication, in order that they also may become centers of inland trade and emporiums for the commerce of many nations.

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[1] P. F. O'Carroll, Esq., in Baltimore *Sun*, December 24, 1881. Judge Chas. E. Phelps, in a paper read before the Md. Hist. Society, on "Celtic Baltimore: Its Etymology," came to the conclusion that Baltimore signified "God's place," being derived from the two words, *Bal* = place, and ti-mor = Supreme Being. One antiquarian sees in *Bal*, a corrupted form of "Baal," the Phœnician divinity.

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The Influence of the Proprietors in Founding the State of New Jersey.[1]

"We, the people of the State of New Jersey, grateful to Almighty God for the civil and religious liberty which He hath so long permitted us to enjoy, and looking to Him for a blessing upon our endeavors to secure and transmit the same unimpaired to succeeding generations, do ordain and establish this Constitution."

These words are the ordaining clause of the present constitution of New Jersey, which was adopted in 1844. They are not the introduction to the terms of an agreement; they begin no compact. They are a creative fiat; they call into being a law of laws for the commonwealth; they institute a government. But the people who thus ordain, who exercise this highest original faculty, are not themselves the product of a single creative act. The self-government here in full activity, the only real counterpart of the people, was a growth, to whose perfecting many agencies contributed.

The nature of an act done by an absolute monarch and that of the ordaining act of a self-ruling community, are nowhere more clearly contrasted than in the feelings of interest with which we regard the two. The former excites no curiosity as to the origin of its producing power. It has the same source as the commands of a wilful child, and is as single in motive; whereas the sovereign act of a people leads us to inquire by

[1] Read at Perth Amboy, November 25, 1884, the two hundredth anniversary of the establishment of the American Board of Proprietors of East Jersey.

what process the many individual wills have been wrought into the one will, which, with a mature consciousness, imposes laws upon itself. The enduring constitution of a free people, always implies a historical growth in that people.

The political life of the people of East New Jersey embraces five periods of varying length. The first, excluding the discovery and the taking possession of the territory, begins with the grants of 1664, respectively from the King to the Duke of York and from him to Berkeley and Carteret, and ends in 1682, the date of the transfer of soil and rights of government to the twenty-four Proprietors—a period of eighteen years. The second period was twenty years long, to 1702, the date of the surrender of powers of government to the Crown. The third period was that of the royal government from 1703 to 1776. The fourth from 1776 to the adoption of the Constitution of the United States in 1788. The last, the national period of ninety-six years.

Which one of these was the period distinctively formative of the political character of the people of New Jersey? The answer to this question does not lie upon the surface of the events of these divisions of the past, for strongly marked as are the lines which separate these periods, there is but one growth, in which they are all necessary factors; so complete is the unity of continuous life, that the history of one involves the consideration of all. Our investigation brings us face to face with this fact, that all these separate stages are vitally essential to the complete development, therefore in one sense equally essential, yet we are cheered in our further search by the reflection that there must have been a time whose peculiar relations to its past and future were more fully determinative of political character than those of any other period. Is there not in the life of every people a time, when the motives and thoughts and all the lines of social life of the past come together, and then all lengthen on into our present, so that if we trace them back they seem to have radiated from that point and further back all radiate toward that point, so that

viewed as a whole, the influences and causes and effects of the remote and intervening past there intersect? This is true of the great world history. The ancient nations are all merged in the Roman Empire; out of Rome all modern nations have emerged. The period of Roman supremacy was the point of intersection where the lines of all human activity crossed. Something of the same sort is true of this State community, whose formative point is to be found in the time of the Proprietors; the active principle in this case, however, was not Force, the world-conqueror, but the quiet beginnings of home rule.

The grants of 1664, and the "concessions" from the Proprietors, Berkeley and Carteret, began the work of founding the separate community. The grants fixed the boundaries of the future State as a distinct part of the realm, owing allegiance and having a right of appeal to the English Crown. Do we value the separate existence of our State? Let us be grateful then for the timeliness of the grant. Had it not come at this time, in all probability it would never have come. The concessions, besides granting as it were by grace certain freedoms and immunities, particularly religious rights, establish a general representative Assembly. The legislative powers granted to this Assembly were adequate to all the needs of the community, comprising the power to appoint a time for the meeting of the Assembly and its adjournment, to enact all laws necessary for the government of the Province, provided they were agreeable to the English constitution and not against the interest of the Proprietors or the concessions. The Assembly had the further power to erect courts and determine their jurisdictions, the power of taxation, of dividing the Province for local purposes, war powers and the power of naturalization. But these powers were not to be exercised independently of the assent of those who represented the Proprietors—namely the governor and a council appointed by him. The governor and his council were thus constituted a co-ordinate branch of the Legislature and they received by

the concessions some important executive and legislative functions to be exercised independently; and as though implying that they might exercise powers not expressly delegated, they were prohibited from acting contrary to the laws of the Province, and a section taken from the Magna Charta and the Petition of Right forbade their imposing any tax without the consent of the General Assembly. The concessions thus formed a fundamental law adequate to the settlement and government of the Province. They gave a guarantee of some of the most important rights, and they left to the people a large control of their local concerns. They rendered a distinct service by beginning in New Jersey the process of differentiating English self-government. Back of all, was the King and the Parliament—the English constitution, but there was a wide field for special law-making, which the orders of the King and the Acts of Parliament did not enter. In this field the New Jersey General Assembly had somewhat of the dignity of Parliament. There was an implied recognition of a difference in the political life of the Province, in that but one of the vital parts of the English constitution as found in the Petition of Right was lodged in the concessions—the principle of taxation by the legislative power alone. It was further prophetic of a new era that Carteret, who had held the Island of Jersey against the Parliamentarians to the very last, should, with Berkeley, another Royalist, adopt this most important principle which the Revolution had gained as part of the primal law of the new Jersey.

This earliest constitution was in the nature of a compact with the individual settlers, and afterwards, as they came to be represented in the Assembly, with the people as a body. But something else was needed to constitute the people within the bounds of New Jersey a body politic, in whom original political power might be said to inhere. This something was not the mere Act declaring and establishing independence, but the generating and gradual growth of a spirit to which independence in the fulness of time should not be an un-

natural act but a part of the regular process of development. The beginnings of such a growth were not directly supplied by the concessions which came from without. The new life must have its source in the people themselves.

The first evidence of an original political life in the people was in their restlessness under the operation of the concessions. The representatives in the Assembly very early insist upon a joint session with the governor and council, where their power from their superior numbers must over-rule that of the governor and his council. By successfully resisting this effort the representatives of the Proprietors secured to New Jersey in the earliest Assemblies the manifold advantages of two houses in legislation.

The next display of the popular spirit was in the refusal to pay the quit-rents stipulated in the concessions. This opposition was in the strictest sense illegal; so far as the concessions were building up the Province, it was disorganizing—the so-called disorganizing Assemblies of 1671 and 1672 going so far as to seek a virtual overthrow of the properly constituted provincial authority, through the choice of James Carteret as president of the country. But the value of this illegal resistance in awakening and strengthening in the people the power to perfect an organic law was two-fold; first, the imposition of quit-rents, even though sanctioned by the fundamental law, had something of a feudal nature, and it called up that spirit which the feudal system of the middle ages universally awakened, the spirit of resistance, a personal resistance, a defiance on the part of the individual. The tendency, then, was to strengthen individualism, individual character on its good side as well as its bad we shall find if we follow this influence far enough. The devotion to public liberty of New Jersey, like that of Virginia, has ever been infused with a marked zeal for personal freedom. This spirit in the southern state may be attributed in part to the isolation in which the planter lived. In New Jersey the series of early events connected with the Elizabethtown grants, the harassing

influence of the demands for the quit-rents and like causes, contributed also to the formation of the same characteristic. But as individualism grew, the sense of the value of government was not, in the end, impaired, and individual responsibility for it was quickened. A second result of the differences between the government of the first Proprietors and the people was the development of the town as an essential factor in the Province. Almost from the first these political units of the State had, through the grant of large prudential powers from the governor and council, a vigorous life. As distinct and integral political organizations the towns, whether together in the Assembly or in their separate town meetings, were made the instruments of opposition to the representatives of the Proprietors.

The various immediate objects of opposition to the governor and council were not gained either by the individual man or by the towns, and this failure was not without influence in teaching them real self-government. They learned that it was not the caprice of the individual, nor the shifting opinion of all within the circle, whose centre was the one market place. True, the towns had, by grant from the Proprietors, their special privileges, but these could not form a body of law for the Province nor supersede its necessity. So men and the towns find their way back to the concessions. The deputies to the General Assembly are still in opposition to the governor and council in 1681, but now they insist that the concessions are to be taken according to the letter, without any interpretation whatsoever; that the constitution of courts by governor and council, and the explanation of the concessions made in 1672, by Berkeley and Carteret, are a breach of the concessions, and the deputies declare the inhabitants of the Province not obliged to conform themselves thereunto.[1]

The Assembly for the first time in the history of the Province was then dissolved by the governor, an act which the

[1] N. J. Archives, I., pp. 355, 356, 359.

deputies unanimously protested was contrary to the concessions and an innovation of the government. The beginnings of the power and the spirit of complete self-government were here manifest. The people deliberately chose the concessions as the basis of their political life.

In 1683 the deputies attempt to "disown" the concessions, but now the governor and council are strict in their adherence to the "foundation of government."[1] Thus the concessions, alternately favored and opposed, are rooted more firmly, just as that tree is more firmly rooted, upon which the wind blows from various quarters.

A happier evidence of the beginnings of the higher political life of New Jersey as a distinct community was afforded in 1680. The spirited opposition of the deputies to the governor of New York, when he attempted to usurp authority over the Province of New Jersey, the manly resistance of Governor Carteret to the same usurper, and particularly his letter in which he denies a right of levying duties in the interest of the Duke of York, without the consent of the New Jersey Assembly, unite for the time being, all the forces, to render an enduring service in the making of the State. The service was the greater because of the simultaneous action of West Jersey for the same noble end.[2] This effort of the two Provinces, successful in vindicating their rights to freedom from taxation was a triumph for the agencies which would one day demand independence for the reunited halves of New Jersey and for the united colonies, while the influence of the victory for equal commerce lived in New Jersey until the adoption of the Constitution of the United States. The action of Carteret in defending the jurisdiction of New Jersey against the encroachment of Andros, aroused a hostility to the latter in England, which brought about his recall and helped to awaken the spirit which later in England defended the cause of America.

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[1] Record of Governor and Council, p. 80.
[2] Smith's History of New Jersey, p. 117.

In the first period, then, this much had been done to form a new people. Under the concessions, the Province began to be settled; individualism as a necessary part of self-government gains greater significance; town government is begun and influences the growth of the embryo State, while the Province as a whole begins to be something more than a mere name; it is a part of the English realm, but a distinct part and not a dependency of New York.

When the rights of soil and of government were transferred to the twenty-four Proprietors in 1682, many of the conditions which are of universal value in the making of a State, were present. The time, the last quarter of the seventeenth century, was one of general political formation. The Thirty Years' War had run its disastrous course; William of Orange fought absolutism on the Continent, and the Revolution of 1688 began a new era in England; the Great Elector, after the battle of Fehrbellin, was laying the first foundations of Prussia. Only France was given over to absolutism, but by the revocation of the Edict of Nantes she gave in the Huguenots some of the best of formative elements to South Carolina. Massachusetts and the New England colonies began a new career, when the attempt at centralization by James II. failed and their charters were restored. In 1684, many of the colonies joined in a defensive league against the savages, the second of the minor prophecies of the great Union to come.

The young community shared in the influences of the general movement; and there were special conditions which favored her growth. A law of the General Assembly of 1676 speaks of the Province as being "in its minority."[1] Like a prince one day to be a sovereign, who attains his majority at the age of eighteen, so New Jersey after the first period of eighteen years, was ready to begin the work which should fit her for the higher duties and powers. Here was a

[1] Leaming and Spicer, pp. 120, 122.

people beginning to prosper, but hopeful rather than contented; of conflicting motives, but the motive to union always in the end prevailing; in close relations with nature, who imparted to them qualities which they could never lose but must transmit to their posterity. She gave them rich promises; "here is a brave country," writes Rudyard, the first Deputy Governor under the new Proprietors; "here is a gallant, plentiful country," writes Lawrie, his successor. Penn took a view of the land and said he had never seen such before in his life. "The people," said Rudyard, "are generally a sober professing people, wise in their generation, courteous in their behaviour, and respecful to us in office among them."[1] The people in accepting the early concessions, had "expectation," so they said in West Jersey, "of some *increase* of those freedoms and privileges, enjoyed in" England, and the expectation grew with the growth of the Province and with the change of the proprietaries. It was a tendency that could not be stayed until the people were, in their own phrase, "*owners of their liberty.*"[2] How was this tendency met by the twenty-four Proprietors? Whatever their theory was as to the necessity of a firmness of administration to gain their pecuniary rights, in other respects their conduct harmonized with the wishes of the people. In "a brief account of New Jersey, published in 1682, by the present Proprietors, for information of all inclined to settle in that country," they say that in the concessions, provision was made for liberty in religion and property in estates, and "we," they continue, "shall be ready and desirous to make such further additions and supplements to the said Constitution, as shall be thought fit for the encouragement of all planters and adventurers, and for the further settling the Colony with a sober and industrious people."[3] Whatever

[1] Smith, pp. 169, 170, 179.
[2] Ibid., pp. 120, 124.
[3] Smith, p. 542.

change, then, the Proprietors might make in the organic law could only be construed in the light of this promise, the spirit of which as well as the letter, bespoke the largest liberty for the emigrant. So too, the seal of the twenty-four Proprietors, as they undertook the duty of government, was in keeping with this natural character of the Province and of its people. Every official act of the twenty-four Proprietors received the stamp of this seal, on which were exquisitely engraved the emblems of plenty and of even-handed justice. Surrounding the emblems were these legends: "Righteousness exalteth a nation. Its God giveth increase." Thus every act of theirs testified to their recognition of a God-given increase of the fundamental law as well as of the fruits of the earth.

The letter in which the Proprietors announced to the people their purchase of the Province, breathes the same spirit. "We desire nothing more than to approve ourselves as you may find yourselves happy." "Your interest is now so bound up with ours that we cannot suffer if you prosper, nor prosper where you are injured." And they promise "everything that may be needful toward the good government and advantage of the Colony." [1]

The seal of the Proprietors was further indicative of the character of the new government. The seal of Berkeley and Carteret bore their coats of arms and thus suggested a personal government. The seal of the twenty-four was absolutely impersonal, so far as men were concerned; God alone was recognized as the author of the growth and exaltation of a nation. It was almost as though human direction were withdrawn, and abstract principles, free from the impress of the mind even of great men, were left to work their own work among the people. The Proprietors were rather the servants than masters controlling the principles of government which were becoming active in New Jersey. "It is

[1] Leaming and Spicer, p. 167.

not possible for you to understand," so writes Lawrie, the Deputy Governor, to the Proprietors, "what is for the good of the Province as I do that am here," [1] and in response, the Proprietors adopt the act of the first of August, 1684, in which they acknowledge the necessity "*that there be full and ample power constituted in some persons in the Province, to do all things that may contribute to the good and advancement of the same.*" This instrument transfers immediate supervision of the Proprietors' interests and rights from England to commissioners in America.[2]

Another Act, giving ampler powers and more practicable conditions to the new American Board of Proprietors, and freer self-direction to the people, was adopted a few months later, *and two hundred years ago to-day.*[3] It is fitting that those who hold the power of the State in trust and representative citizens from all parts should commemorate these acts, for they were significant in the founding of the State. They were as important to the development of political power in eastern New Jersey, as "the vote," two generations before, by which in the transfer of the Massachusetts Company to America, "a commercial corporation became the germ of an independent commonwealth." [4] Under these Acts, the first full exercise within the borders of the State, of the proprietary power of revising legislation took place two hundred years ago the coming Thanksgiving day. "To all Christian people and others to whom these presents shall come," the American Board of Proprietors address their act confirming the laws of the past two years.[5] In the volume of seven hundred pages, containing these early laws and constitutions, it is the only Act so addressed. We may readily infer that

[1] Smith, p. 178.
[2] Leaming and Spicer, p. 195.
[3] Leaming and Spicer, p. 198.
[4] Bancroft, Hist. of U. S., Cent. Ed. I., p. 275.
[5] Leaming and Spicer, p. 281.

the Deputy Governor and his fellow Proprietors who signed the Act, were conscious that it indicated a new adjustment of political forces. The Proprietors become as far as possible identified with the Province. The new Board share with the people in the making of the law, while with all citizens they are equally subject to the provincial law.[1] But we arrive at the full measure of the importance of this assimilation of proprietary and popular government when by the study of the events of the next half generation, we learn to know the principle of government, which the Board of Proprietors grew more and more to represent. It was neither of the three historic forms, monarchy, aristocracy or democracy. It stood for essentially the modern principle of the non-interference of government, the laissez faire, the hands-off theory, the least government the best. It gave the opportunity for the action of a self-determining power within the four bounds of New Jersey, by virtue of which, the inhabitants of that portion of the globe could as one body say with truth, a century and a half later, "all political power is *inherent* in the people."[2] It is true, the twenty-four Proprietors had prepared for the Province a new organic law—the so-called Fundamental Constitutions, which, though sanctioning in part, were designed to supersede the concessions, and they instructed their Deputy Governor to "order the new scheme of government to be passed in an Assembly."[3] But they tacitly acquiesced in its rejection. In a conference of the deputies with the governor and his council on the 19th of April, 1686, Governor Lawrie made inquiry "of what answer" they gave touching the scheme of government laid before them a few days previously. The deputies answer "*that they apprehended the same did not agree with the Consti-*

[1] Scot's model in Whitehead's East Jersey under the Props., pp. 398, 447, 449.

[2] Constitution of 1844.

[3] Leaming and Spicer, p. 175.

tution of this Province, and that they understood that the same were nowise binding, except passed into a law by the General Assembly." The governor's council had already given it as their sense "*that the same did not agree with the Constitution of these American parts.*" [1]

The governor did not press the matter, nor did the Proprietors further insist on it, and in this simple way the great act was done, at once asserting and confirming the ordaining power. The people of East New Jersey had determined that by their own authority their organic law should be.

By refusing the Fundamental Constitutions and planting themselves on the concessions, the people secure all that had been gained in the first period, and the proprietors, sharing in this essentially ordaining act of the people, the rights of self-government became indefeasible. It was only natural, then, that in an act passed thirteen years later, declarative of rights and privileges, many rights and privileges should be included, which had hitherto never found expression in the Province.[2] The people were creating the organic law. It was a solemn act. "*The whole House of Representatives,*" so runs the record of the governor and council, "*came before this Board and gave in the Bill of Rights . . . passed their House, which was read here and passed this Board.*" [3] This act, including many of the provisions of the concessions, has also many features in common with the government which the people ordained in 1776.

With this act, which bears the date of the 13th of March, 1699, together with that of the 19th of April, 1686, the work of the Proprietors in helping to lay the legal foundation of the State was complete. It was an anomalous government. An idea grew up after the revolution of 1688

[1] Record of Governor and Council, pp. 125, 126, 128, 131.
[2] Leaming and Spicer, p. 368.
[3] Record of Governor and Council, p. 219.

that it was no rightful government. King William contested its title, and the people of East New Jersey petitioned the Crown against the Proprietors, and factions sprang up among themselves. Of the original Proprietors, but *four* were left in 1702 to surrender what they admitted in the instrument of surrender was a pretended right to government, but the fact remains, that better than they, or those about them, knew, they built for all time.

Three-quarters of a century must pass before independence was declared, but the people of New Jersey were already capable of an independent political life. In fact, from 1689 to 1692 there was no general government. The local administration of law secured the peace and welfare of the whole Province. In the contest with the royal governor, Lord Cornbury, in 1707, the representatives of the people reject with abhorrence the charge of the Council that they purpose throwing off their allegiance and revolting from the Crown of England. So they abhorred the thought, even after the War for Independence was begun, but they were no less capable of independence had it come two generations earlier. We may note that in this same reply to the complaint of the Lieutenant-Governor and the Council to the Queen, the people do not disclaim the right to judge, as was charged, whether royal orders conformed to law.[1] The right of self-rule, which they had gained in the time of the Proprietors and under the influences of their government, they kept until all the Colonies were equally ready to assert with them that this right should be national in America.

But we find evidences elsewhere than in the growth of the fundamental law, that under the influence of the Proprietors the State, as we know it, was gradually forming.

No stronger influence moulds the life of the people of a State than that which comes from its minor political divisions. The town and the county have shaped the life of the States of the Union. In this respect there are three classes

[1] Smith, pp. 347, 386.

of States; those in which the town is the political unit—the six States of New England; the second, those in which the county is the unit—the States of the South; the third, those of the "compromise system," as it has been called—a mixed organization of county and township prevailing in the Middle States and the West.

Town government sprang into a vigorous, self-directing life at the time of the first Proprietors,[1] and county government had its feeble beginnings;[2] but it was only in the time of the second proprietary government that the two organizations grew into a composite whole.

The temptation is great to dwell upon the history of this phase of State development from this time on; to show how the functions of the two local divisions were adjusted; to point out the unconscious beginnings of the forms and harmonies which exist to-day, but the present purpose of our study will not admit of a statement of its every result. Only in general, it may be said, that to this period is due the founding of that system which, more than any other influence, gives individuality of character to the self-government of the State.[3]

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[1] During this period local government was exercised by virtue of charter rights in seven towns, namely: Bergen, Elizabeth, Newark, Middletown, Piscataway, Shrewsbury and Woodbridge.

[2] By a law of the General Assembly of the 13th of November, 1675, the towns were grouped into counties with no very definite limits, and with the sole purpose of erecting courts. Leaming and Spicer, p. 96.

[3] A view of the methods of *taxation*, as found in the tax laws of the Proprietary period, will, perhaps, best show the germination and gradual growth of local government in New Jersey.

CONCESSIONS.

1664.—By the Concessions the General Assembly has power to lay taxes upon lands or persons within whatever *local divisions* it may erect within the Province. (Leaming and Spicer, p. 16.)

LAWS OF GENERAL ASSEMBLY.

May, 1668.—First tax, thirty pounds—five pounds to each *town*—in country pay to be delivered by inhabitants to Jacob Mollins, of Elizabethtown. (L. and S., p. 81.)

The constituting of courts is another important formative element. An authority not lightly to be questioned says that Lord Cornbury "is entitled to the credit of having laid the foundation of our whole judicial system."[1] But the beginnings of it seem to date from the legislation of this period. Here we have the Common Law Courts in town[2] and county,[3] a Supreme Court for the Province.[4] distinctions between law and equity jurisdiction;[5] provisions for appeals on account of errors or other grounds,[6] for regular prosecutions and issuing of processes[7]—in short, a systematization of the administration of justice.

November, 1675.—*Towns* and *plantations* grouped into *counties* for the sole purpose of erecting courts. These counties have no very definite bounds, and they receive no names. (L. and S., p. 96.)

December, 1675.—*Provincial Treasurer* appointed, to whom *town constables* are to bring in the rate. (L. and S., pp. 103, 104.)

December, 1675.—Assembly proposes to raise fifty pounds, Governor's arrears, by *subscription* to be paid to constables of *towns*. (L. and S., p. 104.)

April, 1676.—*Three select men* to be chosen by the freeholders of every *town* to assess Governor's arrears not subscribed. (L. and S., p. 117.)

October, 1676.—Constables of every *town* to receive and compel payment of rates levied by the General Assembly. (L. and S., p. 121.)

1678.—Country rates levied upon land. Governor's salary paid by poll taxes. (L. and S., pp. 129, 130, 125.)

[1] Field's Provincial Courts, Coll. of N. J. Hist. Soc., Vol. III.

[2] An elective Court in every town having cognizance of cases to the value of forty shillings, a Justice of the Peace to be one of the Court. Leaming and Spicer, pp. 99, 100, 229.

[3] In every county, Courts of Sessions or County Courts, whose sessions were at first annual and afterwards biennial and quarterly. Leaming and Spicer, pp. 96, 230, 268, 347.

[4] A Court of Common Right with original and appellate jurisdiction, to have cognizance "of capital, criminal, or civil causes of equity to be the Supreme Court of the Province," with quarterly sessions. Leaming and Spicer, p. 232. In W. J., 1693, a Supreme Court of Appeals, Leaming and Spicer, p. 517, and a Court of Oyer and Terminer, Leaming and Spicer, p. 520.

[5] Leaming and Spicer, pp. 232, 348.

[6] Leaming and Spicer, p. 232.

[7] Leaming and Spicer, p. 253.

Other influences came from the people of that day to determine what the people of this day should be. The very homeliness of much of the legislation of those twenty years shows that self-rule was thrusting out its roots into the best of soil, and yet on the other hand, the General Assembly of this feeble Province could rise to the dignity of enacting in a separate law, the thirty-ninth and fortieth chapters of the great Charter, "the essential clauses," as Hallam calls them.[1]

In the formation of this body of law, there were many conflicts; there was turbulence at times in the Province, but the greatest of living historians has said, that "all progress

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March, 1682.—"For the better governing and settling courts," in the Province, the General Assembly divides it into four *counties*, which receive names and definite bounds. (L. and S., 229.)

1682.—Justices of *County Court of Quarter Sessions* impowered to assess tax for building a jail in each *county* and a pound in every *town*, and to appoint collectors and receivers of this tax. (L. and S., p. 268. Compare Allinson's Laws, p. 14.)

December, 1682. Tax of fifty pounds apportioned among the *counties*, to be assessed in each *county* by six men appointed by the Assembly, upon improved lands and stocks. *Town constables* to act as *collectors*, and to pay the sums collected to the *Treasurer of the Province.* (L. and S., p. 274.)

In 1684 the West Jersey Assembly impowers each *tenth* to lay and levy road taxes, and to choose six assessors and two collectors of a general tax. (L. and S., p. 494.)

April 19, 1686.—Four or five assessors to be chosen by the people of each *town* to levy rates for highways laid out by *County* Commissioners, (named by the General Assembly, L. and S., p. 256), and taxes for all other public charges within the respective limits of the *towns;* the rates and taxes so made to be presented to the *Court of Quarter Sessions* in the respective *counties.* The Justices of the Court to approve, amend and confirm them with the consent of the majority of the assessors. (L. and S., p. 294.)

The above act, in a large sense the beginning of combined *town* and *county* action in the matter of *taxation*, was passed on April 19, 1686, the same day on which the Deputies refused the Fundamental Constitutions.

The birth of the mixed town and county system, the special form of New Jersey local rule, was thus coincident with the birth of self government in the Province as a whole. (Record of Governor and Council of East Jersey, 1682-1703, pp. 131, 132.)

[1] Leaming and Spicer, p. 240.

comes through conflict." It is not true, indeed, that peace has her victories, *because* war has had hers. A recent address[1] before the New York Chamber of Commerce is most suggestive in this regard in respect to our national wars. Does not the same hold true in the smaller sphere?

On the freedom of religion, the concessions allowed no restriction, not even by "any law or statute or clause contained, or to be contained, usage or custom of the realm of England," but the people in their Law of Rights in 1699, follow the leading of the English Bill of Rights of 1689, and decree intolerance of the Roman Catholic religion. In the Constitution of 1776, too, civil rights are guaranteed to

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This Act was modified nine years later, 1695, but only to facilitate its operation. It was, therefore, thereby virtually confirmed. (L. and S., p. 355; Compare *inter al* Allinson's Laws, pp. 14, 35, 60, 115; Revised Statutes, Sec. 12, p. 129.)

May, 1688.—To withstand invasion of the French, specific tax on land, cattle, horses, swine, and poll tax on male persons of sixteen, to be levied and collected by *County* Commissioners appointed by the Assembly. Constables of each *town* to receive estimates of taxable property and deliver them to their respective *County* Commissioners. Taxes to be paid by the inhabitants to the respective *County Treasurers* appointed by this Act for the first time by the General Assembly. (L. and S., p. 306.)

1692.—Method of levying and collecting tax similar to that of 1688. (L. and S., 321.)

In this year the West Jersey Assembly empower each *county* court to appoint County Collectors of a poll tax. (L. and S., p. 510.)

1693.—The county growing in importance. Each *town* in the county was empowered to choose one or more men to join with the justices of the county court, annually, to adjust the debts of the *county* and assess taxes for their payment. (L. and S., p. 333.)

1693.—King's tax for defence against the French. Twenty men to be raised proportionately from the five *counties*. To maintain these soldiers a tax of four hundred and thirty pounds in specifics to be raised. This Act appoints one Commissioner for each *town*, who receives from the town constable estimates of all ratables in the town. These Commissioners meet in a body at Perth Amboy and equalize the assessment. The taxes collected by *County* Receivers appointed by this Act. (L. and S., p. 334.)

[1] That of Mr. Evarts, at the one hundred and sixteenth anniversary dinner of the New York Chamber of Commerce.

Protestants alone. Only in the Constitution of 1844 has New Jersey turned to the times of the Proprietors and brought back again the fearless spirit of complete religious liberty.

For education, the earliest town charters granted by the Proprietors, provided; in Woodbridge, one hundred acres were to be laid out for the maintenance of a free school,[1] and school lands were to be exempt from quit-rents. The towns established schools, and laws of 1693 and 1695 provided for rates and the regulation of schools by selectmen.[2]

We must not leave out of sight the influence of the Proprietors in gathering this provincial population from many

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October, 1694.—Act for the appointment of *County Treasurers.* The justices of each *county court* to appoint at their discretion a County Treasurer to disburse county funds in paying for the destruction of wolves, providing for the poor and orphans and defraying the county debts. (L. and S., p. 350.)

1695.—One hundred and fifty pounds in silver, proportioned among the *towns* of the Province and the counties of Monmouth and Somerset, to be levied upon all estates real and personal, as each *town* and the two counties named shall adjust the rates. General Assembly appoints the collectors, vacancies among whom are to be filled by the *town*, or in the case of Monmouth and Somerset by the county. (L. and S., p. 353.)

1698.—An Act for making town rates to defray town charges. Each *town* chooses three men to assess for (1) representatives' wages, (2) charges about highways, (3) rates for the poor, (4) constables' wages, (5) killing wolves, (6) repairing burying places, (7) schools, (8) pounds, (9) clerks' wages. This assessment to be presented to any justice of the peace of the *county*, who may approve or amend the same with the consent of two of the three persons chosen as above. (L. and S., p. 372.)

1698.—General tax of six hundred and seventy-five pounds. The act introduces a system of taxation on real estate by polls and specifics nearly identical with that later adopted by the State Legislature. (Compare Gordon's Gazetteer, pp. 57, 58; also Laws of West Jersey, 1684, 1685, 1693, 1696, 1697, 1700; L. and S., pp. 494, 505, 521-2, 549, 561, 574.)

By this Act an assessor or commissioner was named by the Assembly for each *town*. These assessors to meet in the capital of the Province to equalize assessments. They also serve as collectors and receivers. (L. and S., p. 376.)

[1] Whitehead's East Jersey under the Proprietors, p. 287.

[2] Leaming and Spicer, pp. 328, 358.

parts—from New and Old England, from Scotland, from Ireland, to join them to the Dutch already here to make the one people.

The latest writer on American Colonial History says that the colonists of New Jersey had a strong respect for vested rights.[1] May we not attribute the feeling to the experience, which grew out of the early and safe system of the proprietary grants, and, on the other hand, of the disputes, in some parts, which enforced the necessity of secure titles?

The contest the people had to establish their fundamental law, taught them the value of a written constitution and the absolute need that law should conform thereto. Though it grew up in part by legislative enactment and though the constitution of 1776 carries the implication of possible legislative amendment, yet in a spirit, born as we may believe in those early days, and certainly expressed in the earliest constitution of West Jersey, Chief-Justice Brearly in 1780, gave a decision of prime historical importance. Other States than New Jersey have been called the formative centres of the various influences which have combined to bring about the one great result—this mighty union; but New Jersey has at times shown the way. This decision of her Supreme Court was the first of the series which established the principle and at last made it a part of the Constitution of the United States, that an unconstitutional law is no law and it is the function of the judiciary to say so.[2]

The second occasion when New Jersey showed the way to her sister States, was when she sent her delegates to the Annapolis Convention in 1786. This convention was called to secure uniform regulations of commerce in the Articles of Confederation, then the Constitution of the Union. New Jersey was not unmindful of the struggles she had had, in

[1] Lodge's English Colonies in America, p. 278.

[2] The decision is referred to by Ch.-J. Kirkpatrick, in State *vs.* Parkhurst, IV., Halstead, p. 444.

the times of the Proprietors to secure from New York a commerce rightfully her own, but rising from that consideration, to her perhaps more important than to any other State, for she was like a cask flowing at both ends, tapped by New York and by Philadelphia, she suggested that the amendment should include, besides a power over commerce, "other important matters." The convention caught at the suggestion, and Hamilton, the herald of the better union, proclaimed it as the basis of the call to the Convention at Philadelphia, which gave us the Constitution of the United States.

In the times of the Proprietors we do not find in New Jersey many germs of an American Union, though in one or two cases the Assembly, "sensible of brotherly love to our neighbors," voted men and money for the war on the frontiers against the French. This spirit was with New Jersey of somewhat later growth; it came in royal times, but in the war for Independence, New Jersey ranked with Connecticut next to the first in the number of men she furnished, and other evidences were not wanting of a zeal for the good of the whole Union. But in the formation of the "more perfect union," she represented rather the principle of localism; the home rule of those early days had grown into the idea of the indestructibility of the State. This idea she brought into the Federal convention and around the banner of the "Jersey Plan," Livingston, Paterson and Brearly fought for it. When the existence of the principle was assured by the grant of equality of State representation in the Senate, how gladly did these, her champions, leap forward to give to a nationalism based upon localism, ample powers for the greatest work that ever fell to the lot of one people.

The Legislature of New Jersey had been the first in America to apply to the Union, the phrase of Montesquieu—"a Federal Republic." Unanimously her people ratified the Constitution of the United States, in which it was made real.

The States of Greece, which one may call the creative States, those which made her the leader of the civilization of

the world, had together nearly the same area as New Jersey. By the coast line and the lines of the hemming mountain ranges, the forces of their life were turned inward; so New Jersey was confined by careful bounds and her life grew from the forces concentrated within her borders. When absolutism swept down upon Greece from the East, she repelled the Persian invader on the plain of Marathon. On the plain of Monmouth, the humble commonwealth, aided by her sister States, fought, if not the decisive battle, yet the one prophetic of the final overthrow of English absolutism; for after it, Frederick the Great said, "America is lost to England." But the destroyer of Greece came from the West. The self-government of Greece, which was her glory and the cause of her power, was engulfed in the imperialism of Rome. When the imperial idea arose in the Western Hemisphere, promising a new nation of gigantic proportions, and with the possibilities of unbounded continental strength, with the aid of the other pent up States, all but one proprietary, New Jersey, in the Federal Convention, lodged in the foundation of the indissoluble Union, the integrity of the individual State. New Jersey was never enrolled among the World-States, but happier than Greece she insured to herself an unending future. She made her continued existence the condition and the cause of imperial strength. Largely through her influence and further back, the influence of her founders, *local* and *national* self-government are blended, yet each keeps its identity. The fruits we enjoy grow on the tree of this self-rule:

> ——the one great tree, that up from old time
> Growing, contains in itself the whole of the virtue and life of
> Bygone days, drawing now to itself all kindreds and nations,
> And must have for itself the whole world for its root and
> branches.

JOHNS HOPKINS UNIVERSITY STUDIES
IN
HISTORICAL AND POLITICAL SCIENCE

HERBERT B. ADAMS, Editor

History is past Politics and Politics present History — *Freeman*

THIRD SERIES

IV

RECENT AMERICAN SOCIALISM

By RICHARD T. ELY, Ph. D.

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IV

RECENT AMERICAN SOCIALISM

"Opinio omnis ad eam spem traducenda, ut honestis consiliis justisque factis non fraude et malitia se intelligant ea quae velint consequi posse."—*Cicero.*

"Das Gewebe dieser Welt ist aus Nothwendigkeit und Zufall gebildet; die Vernunft des Menschen stellt sich zwischen beide und weiss sie zu beherrschen; sie behandelt das Nothwendige als den Grund ihres Daseins, das Zufällige weiss sie zu lenken, zu leiten und zu nutzen, und nur indem sie fest und unerschütterlich steht, verdient der Mensch ein Gott der Erde genannt zu werden."—*Goethe.*

"The nation and the individual exist in an organic and moral relation, in which the normal development of each has as its condition the development of the other, and their unity is formed after the law of a moral unity."—*Mulford.*

PREFACE.

"I presume you have felt, as have I, the sting of criticism and censure—of misrepresentation because discussing this topic of socialism at all." These are words written to me in a letter recently received, by a friend who is professor of political economy in a prominent Western university. They indicate at once a difficulty in the way of the economist. The topics he discusses are so vital, that any presentation of them is bound to be misconstrued in some quarter. Nevertheless, there seems to be only one course for an honest man, which is to say his word and patiently endure misunderstanding and even malicious abuse. But it may not be out of place for me to state the purpose of this monograph.

The aim of the present paper is so clear that only unfortunate experience in the past leads me to explain it in the preface. When my "French and German Socialism" was published, one ill-natured critic complained because my opinions were not distinguished from the opinions I was endeavoring to expound. This criticism was echoed in other places. Now it had not occurred to me that it was necessary to thrust my opinions upon the reader of the history of French and German Socialism. In reading works covering like ground I had often been annoyed by childish criticism such as must occur to every boy, criticism thrust into the midst of the presentation of some theoretical system, so I resolved to abstain from anything of the kind and thought it sufficient to let the facts speak for themselves.

The aim of this monograph is quite similar. It is primarily a presentation and not a refutation. It will be read chiefly by well-educated men, in comfortable circumstances, and of moral natures sufficiently elevated to understand that we ought not to lie, murder, and blow up cities with dynamite to accomplish our

ends. I do not think it necessary to tell them this. I do not think it incumbent upon me to say on every page that I am so far from sympathizing with schemes for destruction, that I regard them as damnable.

I have tried first to understand American socialism, and then to present it in such manner, that others may likewise understand it. I have endeavored to let the parties concerned speak for themselves, as far as possible. Newspapers and magazines are full of arguments against socialism, but it is not plain that the foe is always known.

As to dangers to be apprehended, opinions will differ. The New York *Tribune*, which I have to thank for many generous words in times past, rebukes me rather severely for what it holds extreme pessimism. The basis of this criticism is a few words hastily uttered in an interview and dragged violently out of their connection. However, the writer in the *Tribune* points out the undoubted fact that the distress and discontent were quite as pronounced in the first half of this century in England as now in America, and that, although there was no dynamite then, "incendiarism did more mischief than dynamite has ever done. Famine, riots, organized outrages, brigandage, epidemic diseases, made the country seem a pandemonium." This is true, but the different nature of the discontent at the present time is overlooked. So far were the men of those days from desiring a general destruction of present society, that the terrible "charter" demanded nothing more radical than universal suffrage and annual elections. Discontent then gave rise to a kind of socialism, but of a very different character from that described in these pages. Its leaders were men of large mind and generous nature like St. Simon, Fourier and Louis Blanc, who sought universal peace in peaceable manner. This difference appears to me of importance.

Of course we all hope for the best, but in the meantime it may be safer to fear what is worse, and it can do no harm to be watchful. It is pleasant to believe that no cause for anxiety exists, but it is impossible not to remember the funeral oration Sir John Campbell pronounced over Chartism in 1839. "He spoke at some length, and with much complacency, of Chartism as an agitation which had passed away. Some ten days afterward occurred the most formidable outburst of Chartism that had been known up

to that time, and Chartism continued to be an active and a disturbing influence in England for nearly ten years after."[1]

Nor was it merely a return to prosperity which terminated for the time dangerous agitation. It was also the active efforts of noble men like Thomas Hughes, Charles Kingsley, and Frederick Maurice, whose devotion to the cause of labor has in England, partially at least, bridged the gulf between poor and rich, and whose services now live in large movements for the elevation of the laboring classes.

In conclusion, it is proper to state that this monograph is to some extent a second, enlarged, and revised edition of articles which appeared in the *Christian Union* a year ago. These articles have been used freely, both by pulpit and press, sometimes with generous recognition of the source of information, perhaps oftener without mention either of their author or the *Christian Union*. The consequence is that some parts of it may have a familiar appearance to those who never saw the articles in the *Christian Union*. I desire to say that the information in this monograph is taken at first hand from socialistic newspapers and other materials carefully collected for several years, as well as from lectures, addresses, and private conversation.

RICHARD T. ELY.

JOHNS HOPKINS UNIVERSITY, *April* 7, 1885.

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[1] McCarthy's "History of Our Own Times," I., 5.

RECENT AMERICAN SOCIALISM.

I.

Retrospective.—Early American Communism.

The practical character of the American is a matter of common report, and a cause of national pride. The citizen of the New World is not content with mere speculation; his nature craves action, and nowhere else does practice follow so closely upon theory. This trait shows itself in social movements as well as elsewhere. Young as is America she has already furnished a field for the trial of a large number of romantic ideals of a socialistic nature, and promises ere long to outstrip all that has been accomplished by all other nations in all past time in the way of social experimentation.

Confining ourselves to attempts to realize various forms of socialism and communism, the mind naturally reverts to the "oldest American charter," under which the first English settlement was made on American soil. One condition stipulated by King James was a common storehouse into which products were to be poured, and from which they were to be distributed according to the needs of the colonists, and this was the industrial Constitution under which the first inhabitants of Jamestown lived for five years,[1] during which the idlers gave so much trouble that the old soldier, Captain John Smith, was forced to declare in vigorous language, and

[1] Cooke's Virginia, Chap. III. The date of the charter is 1606.

with threats not to be misunderstood that "he that will not work shall not eat." "Dream no longer," continued Smith, "of this vain hope from Powhatan, or that I will longer forbear to force you from your idleness or punish you if you rail. I protest by that God that made me, since necessity hath no power to force you to gather for yourselves, you shall not only gather for yourselves, but for those that are sick. They shall not starve."[1]

The first Pilgrims who emigrated to New England, were bound by a somewhat similar arrangement which they had entered into with London merchants, but the issue of the experiment was not more successful, and it was partially abandoned; not wholly, for a great deal of land was long after held in common and, indeed, to-day, there are small parcels of this land still common property.[2] As is well known, the Boston common is but a survival of early communism, as in fact its very name indicates.

It must be acknowledged that comparatively little importance attaches to either of these experiments. The Jamestown communism seems never to have been regarded as anything more than a temporary makeshift, and the similar arrangement in New England was of a like nature. There exist to-day in America far larger and more important communistic societies living in peace and great comfort, even in wealth. As far as the common lands are concerned, they are part of a large system of early landholding which still survives to greater or less extent, both in America and Europe.

But two years before the Declaration of American Independence there came to this country a body of men and women with the avowed determination to lead a purely communistic life for all future time. These were the Shakers whose first settlement, that of Watervliet, was begun in 1776. Their own

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[1] Cooke, l. c., p. 54.

[2] H. B. Adams, Germanic Origin of New England Towns, Studies I., No. 2, p. 33.

statement of their principle of Christian Communism is in these words: "The bond of union which unites all Shakers is spiritual and religious, hence unselfish. All are equal before God and one another; and, as in the institution of the primitive Christian church, all share one interest in spiritual and temporal blessings, according to individual needs; no rich, no poor. The strong bear the infirmities of the weak and all are sustained, promoting each other in Christian fellowship, as one family of brethren and sisters in Christ."[1] It is thus seen that pure communism in America is of the same age as American independence. This is not the place to describe the other peculiar doctrines and practices of the Shakers, as celibacy, confession, and separation from the world. Their numbers soon began to increase and they early founded communistic villages in most of the New England States, in some of the Middle and in a few of the Western States. At one time they numbered between five and six thousand, but when Mr. Hinds wrote his book their membership had fallen to about twenty-four hundred, grouped in seventeen societies, their largest community being at Mount Lebanon, New York, and comprising nearly four hundred souls.

The Shakers are of English origin. Their first leader, Ann Lee, came to America from England with eight followers, but her preaching soon won numerous converts, and the second person who followed her in the ministry was Elder Joseph Meacham, a man of American birth, who seems to have been more powerful as an organizer than either of his predecessors.

Early in this century, another body of communists came to the United States from Germany to escape religious persecution. They are called Harmonists, and after a period of migration settled at Economy near Pittsburgh in Pennsylvania, where they now reside. Their first leader, George

[1] Quoted from "American Communities," by Wm. Alfred Hinds, Oneida, N. Y., 1878.

Rapp, a man of great ability and extraordinary force of character, commanded their confidence and governed the community with such prudence and foresight as to lay the foundations of their present wealth, which is estimated at several millions of dollars. But their numbers have declined while their property has increased in value. At one time their membership comprised a thousand souls; at present they do not exceed one hundred. They are celibates and believe that communism is an essential part of Christianity. The Germans have established other communities, as at Zoar in Ohio, and at Amana in Iowa, in both of which marriage is allowed. The latter is the largest of American communistic societies, and embraced sixteen hundred members in 1878,[1] who owned upwards of twenty-five thousand acres.

The French have established a remarkable community, called Icaria, in which they have attempted to realize the pure non-religious communism of Cabet, the author of the charming communistic romance, "Voyage en Icarie." The Icarians came to America in 1848, and were under the personal direction of Cabet for several years, during which they achieved a remarkable degree of prosperity. Their eventful and picturesque history, the most interesting and instructive chapter in the annals of this early American communism, is narrated in Dr. Shaw's admirable book, "Icaria."[2] The work, "Icaria," at once pathetic and romantic, gives us such an insight into the nature of the earlier phases of communism in America, as is afforded by no other publication, and to it the reader is referred for further information in regard to this subject.

American-born citizens have also founded communities, of which the most prosperous is that of the Perfectionists at Oneida, New York, whose "builder" was John Humphrey

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[1] This, like many of the facts in this chapter, is taken from the works of Mr. Hinds, to which reference has already been made.

[2] New York, 1884.

Noyes, son of a member of Congress. The family of Mr. Noyes is described as one of the best, while he himself is a college graduate, has studied at the Yale Theological Seminary, and is undoubtedly a man of fine ability.

Space is too limited to permit the enumeration of the many other communities established in America. The two great periods of a revival of interest in communism, and the foundation of village communities based on that principle, are, 1826, when Robert Owen visited this country and received distinguished attention from the American people, and 1842–6, when under the lead of Horace Greeley, Albert Brisbane, Charles A. Dana, and others, Fourierism extended itself rapidly over the country. Mr. Noyes in his work, "History of American Socialism,"[1] mentions eleven communities founded during the first period, and thirty-four which owed their origin to the second revival of communism. It seems safe to say that considerably over one hundred, possibly two hundred communistic villages have been founded in the United States, although comparatively few yet live. Mr. Hinds in his directory of communism mentions twenty-seven communities. In 1874 Mr. Nordhoff, after personal inspection of the communistic settlements in the United States, estimated the wealth of seventy-two communities at twelve millions of dollars, their numbers at five thousand, more or less, and their landed property at over one hundred and fifty thousand acres, which is a great decline from an earlier period in respect to membership at least.

Forty years ago men of high education and large ability thought that communistic villages would revolutionize the economic life of the world. The process, a speedy but peaceable one, was viewed in this way: The community where all live together harmoniously as brothers with no *meum et tuum*, but with all things in common, affords the only escape from the warring, competitive world of the present where some die

[1] Philadelphia, 1870.

of excessive indulgence in luxuries and others of starvation, and where the future of no one is secure. When a few communities have been established, the happy Christian life which men there lead will attract the attention of outsiders and win them to join the brotherhood of communism. Thus community will follow community with ever accelerating ratio until the entire earth is redeemed. Cabet, for example, "allowed fifty years for a peaceful transition from our present economic life to communism. In the interval, various measures were to be introduced by legislation to pave the way to the new system. Among these may be mentioned communistic training for children, a minimum of wages, exemption of the poor from all taxes, and progressive taxation for the rich. But 'the system of absolute equality, of community of goods and of labor, will not be obliged to be applied completely, perfectly, universally and definitely, until the expiration of fifty years.'"[1]

All these hopes have been generally abandoned as idle dreams, and it is due largely to experiments made in America that the enthusiasts of fifty and sixty years ago have been disillusionized. It is not that the communistic life itself has in every case proved a disappointment. On the contrary, thousands have clung to it with affection through trial, adversity and evil report, and have felt themselves amply repaid for every sacrifice in their new life, while others who have abandoned it, have looked back upon their experience with fond regret. Thus one member of the celebrated Brook farm community uses these words with reference to their feelings in regard to that experiment: "The life which we now lead, though to a superficial observer surrounded with so many imperfections and embarrassments, is far superior to what we were ever able to attain in common society. There is a freedom from the frivolities of fashion, from arbitrary restrictions and from the frenzy of competition. . . . There

[1] Ely's French and German Socialism, New York, 1883, p. 50.

is a greater variety of employments, a more constant demand for the exertion of all the faculties, and a more exquisite pleasure in effort, from the consciousness that we are laboring, not for personal ends, but for a holy principle; and even the external sacrifices which the pioneers in every enterprise are obliged to make, are not without a certain romantic charm."

But the communities failed to win adherents, often failed to continue their own existence. Unthought-of obstacles were encountered in human nature. Idleness was an evil to be contended with, though this seems to have been one of the lesser obstacles in most cases.[1] Petty jealousies have proved more serious, and personal differences, such as are bound to spring up between unregenerate men living in any close connection, have been rocks upon which many a community has made shipwreck. During a period of poverty the struggle for existence has often knit the members of communities firmly together into a compact whole, which has become disorganized by the inability to endure the severer trials of a period of prosperity when factions arise and party bickerings become intolerable. Then the life is too small and commonplace to satisfy the cravings of many of larger natures. There is so little scope for ambition, and ambition is one of the chief traits of mankind. Cleverly contrived and fantastic arrangements like those of Fourieristic phalanxes have never been found to exercise any magic qualities either on converts or the sinful world. Men have not been attracted sufficiently to join the communities in large numbers, because, either for good or for ill, the spirit of the selfish world has been too strong to be deeply touched by the spectacle of generous self-renouncing communism. The flesh-pots of the Egypt of competition have proved stronger than the Canaan of communism, though the latter even now often flows with abundance of milk and honey.

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[1] "The testimony of all communities is that the lazy are easily induced to work by a little friendly criticism and kind persuasion." *The Communist*, July 1, 1878.

Early American communism is antiquated; it exists only as a curious and interesting survival. Yet it has accomplished much good and little harm. Its leaders have been actuated by noble motives, have many times been men far above their fellows in moral stature, even in intellectual stature, and have desired only to benefit their kind. Its aim has been to elevate man, and its ways have been ways of peace. It is impossible to survey its history without a certain feeling of sadness, and we turn from it with a gentle *requiescat in pace.*

II.

Henry George and the Beginnings of Revolutionary Socialism in the United States.

Henry George's work, "Progress and Poverty," was published in 1879. In 1885, not six years later, it is possible to affirm without hesitation that the appearance of that one book formed a noteworthy epoch in the history of economic thought both in England and America. It is not simply that the treatise itself was an eloquent, impassioned plea for the confiscation of rent for the public good as a means of abolishing economic social evils, but rather that the march of industrial forces had opened a way for the operation of ideas new and strange to the great masses. A wonderful epoch of discovery and invention had brought to the service of man the mighty powers of nature in such manner as to accomplish results surpassing the dreams of enthusiasts and the operations of the magician's wand in the fairy tale. This ushered in a period of unparalleled increase of wealth which was sufficient to transform the face of the earth in a single generation, and its beneficent fruits made optimists of men.

But all the products of the age were not beneficent. The new ways required a displacement and readjustment of labor and capital, under which many suffered grievously. Doubtless progress led to the common good "in the end," as people

say, but many perished in the way before the end was reached. Much capital which could not be withdrawn from its old use was lost, to the impoverishment of its owners, and acquired skill was in not a few cases rendered superfluous. To take a single concrete example, let one think of the inns which fifty years ago flourished along the great mail and stage routes. How many were ruined in the improvements which George Stevenson and his locomotive have finally made a daily necessity? Again, advanced processes and labor-saving machinery frequently throw men entirely out of employment, though after a time the demand for laborers may increase immensely, as has occurred in the case of spinning and weaving.

But for the time being men suffer, and the time being is an important factor to men who live from hand to mouth, as is the case with a great part of mankind. Those who suffered, often complained bitterly, and at times uttered dire threats which were occasionally executed in part at least. All this has long been a familiar fact in Europe. From the termination of the Napoleonic wars till the discovery of gold in California and Australia was a period of distress in England, and what Sismondi saw in the crisis of 1819 when on a visit to that country, produced such an effect upon him that he felt compelled to throw overboard the political economy of Adam Smith, to which he had previously adhered, and to write his "Nouveaux Principes d'Économie Politique." The example of England is not an isolated one.

In the United States, however, there was abundance of fertile, unoccupied land on every side, and the undeveloped resources of the country were boundless, both in extent and in their potentialities for production of wealth. While some suffered doubtless, they were comparatively few, and the tremendous strides with which America was advancing in power and prosperity caused them generally to be overlooked. The bloom and fruitage of the age regarded from a materialistic, economic standpoint seemed almost wholly beneficent, and Americans as a rule were optimists. But a change was

impending. A severe crisis in 1873, with all its train of varied disasters, checked economic progress and brought the crushing weight of poverty upon tens of thousands. This was not the first industrial crash in America, to be sure, but it is doubtful whether any other followed on an era of such prosperity.

Then the wealth of a few had increased enormously during the civil war, while luxury such as had scarce entered the day-dreams of our fathers, extended itself over the land. Never before had there been seen in America such contrasts between fabulous wealth and absolute penury. Population was denser and there was not exactly the same freedom, the same ease of movement. In short, from one cause and another, in many quarters bright visions gave place to gloomy forebodings, and six years later the ground was ripe for the seed sown by Henry George, till then an obscure journalist in the "Far West," and the harvest has already been abundant while the promises for the future are overwhelming.

Ten years ago English-speaking laborers were considered too practical to listen to dreamers of dreams and heralds of coming Utopias. The sturdy common sense of English and American workingmen was thought an all-sufficient shield against the speculations of continental philosophers, and the allurements of French and German agitators. Now all that is changed. The models of order threaten to form the vanguard of a rebellious army.

Henry George has rendered two distinct services to the cause of socialism. First, in the no-rent theory, or in other words, the confiscation of rent *pro bono publico*, he has furnished a rallying point for all discontented laborers; second, his book has served as an entering wedge for other still more radical and far-reaching measures. It is written in an easily understood, and even brilliant style, is published in cheap form, both in England and America, and in each country has attained a circulation, which for an economic work is with-